

x

8073.ccc.2.

To of Honorable  
James Gordon Esq;

---

THE  
CONSTITUTION  
AND  
GOVERNMENT  
OF THE  
*Germanic Body.*

---

is with of profoundst Respect present.  
do for the Favor of his Acceptance,  
by the Translator, who is  
His most obliged & obedient  
humble Servant.

Stephen Whalley.



# GERMANIC BODY

...and in  
...members  
...of the  
...but in order to show my  
...government of Germany, I thought it was  
...of the things of the empire, not  
...who by reason of their weakness  
...to suffer many things, which  
...sovereign power at home; but in those  
...in a condition to defend their rights  
...by themselves, or by good alliances  
...neighbours, and who are capable  
...or at least, of inter-  
...the things in the affairs of Europe.

## A P III



A V ... the foregoing chap-  
ter shows, how fatal the imperial  
which the kings of Germany con-  
fessed, after Otto the great, was to  
monarchy in Germany, it is but just that  
also make mention of the advan-  
tages the title of emperor procured  
though far inferior to those, which  
occasion they lost.

*Germany, Empire of*

**T H E**  
**CONSTITUTION**  
**A N D**  
**GOVERNMENT**  
**O F T H E**  
*Germanic Body.*

**S H E W I N G**

**How this STATE has subsisted for Three  
Hundred Years past, under the EMPERORS  
of the HOUSE of AUSTRIA.**

**With an ACCOUNT of**

- |  |  |
|--|--|
| <p><b>I.</b> The Dignity, Rights, Prerogatives, and Qualifications of the EMPEROR and the ELECTORS.</p> <p><b>II.</b> The Election and Coronation of the EMPEROR; and the Articles he is obliged to swear to.</p> <p><b>III.</b> The Election of the KING of the ROMANS.</p> | <p><b>IV.</b> The Ban of the EMPIRE, and the Manner of deposing an EMPEROR.</p> <p><b>V.</b> The Vicars of the EMPIRE; the Circles, Dyets, Tribunals, and Councils.</p> <p><b>VI.</b> The <i>Evangelic Body</i>; and it's Right to protect all those of the EMPIRE, who suffer for the Protestant Cause.</p> |
|--|--|

**C O M P I L E D**

**From the Fundamental Laws of Germany;  
the Histories of the EMPIRE, and the best  
AUTHORITIES.**

*Translated from the ORIGINAL.*

**L O N D O N:**

**Printed for J. NOURSE, at the Lamb, opposite  
Katherine-Street, in the Strand.**

**M,DCC,XLV.**





---

---

T H E  
P R E F A C E.

**T**HOUGH the motives which an author may have for publishing a work, is an affair of no very great concern to mankind; and though their approbation of his undertaking can only be proportioned to his success in performing it; yet I could not refrain from acquainting the reader, in a very few words, with the reasons that have determined me to publish this. I drew the plan of it ten years ago, at the solicitations of several persons of distinction, who longed to know the internal frame of the government of the empire, and believed that the occasion I had to reside a while at Ratisbon, and to spend a few years at the court of Vienna, sufficiently enabled me to gratify their request. What has induced me to hope that this Essay will in some measure answer their expectation, is the desire that several gentlemen, who have had a sight of the manuscript, have been pleased to express, of seeing it in print. But being sensible at the same time, that there is a wide difference betwixt particular friends, whose goodness inclined them to overlook many of my failings, and the public, which is under no manner of obligation to shew the same indulgence, I was not determined to publish it,  
a until

*until the unhappy event of the death of the emperor Charles VI, which immediately drew the attention of all Europe upon the affairs of Germany. I fancied that the curiosity of foreigners, for whom this work is principally intended, was an invitation to me to publish it upon this occasion, however deficient it may be; and that such as are not in a condition to trace things to their source, and to consult the writings of the celebrated civilians of the empire, would not be displeased with me for having here collected out of them what was most proper to give them a distinct idea of the present government of the Germanic Body. It was this view also, that obliged me to set aside many quotations with which such a treatise might be swelled; for I thought it would be sufficient to quote the public constitutions of the empire, on the subjects of the greatest importance, and to have recourse to history for the facts and precedents necessary to give light to them. I presume to flatter myself, that they who have had occasion to inquire into the state of Germany, will not charge me with having misrepresented it; and that, if I have been guilty of any mistakes, they are at least in things which are not essential nor fundamental.*

*In treating of the empire as a great body, composed of many free states, united under one common head, I have only pursued the plan of the*

*the illustrious PUFFENDORF, and many others since his time, who have represented it in this point of view. Being conducted by such guides, and always keeping close to the essential parts which form the character of governments of this sort, I found it no hard task to clear up sundry difficulties that still wanted explanation, and to come at the truth through those semblances of it, which commonly mislead such as only judge of things by their external appearance.*

*There are some points, which I was very sensible were of so delicate a nature, that I should rather have chose not to touch them; and though I could not excuse myself for altogether omitting them, I have endeavoured at least, to treat them with all the caution, and with all the impartiality that was possible. It was absolutely necessary also to do this, for the sake of such of my countrymen, as should turn over these leaves for refreshment, after being tired with the reading of the Public Law books \*, which, to study profoundly, requires the greatest application.*

*Nothing remains for me now, but to desire the courtesy of the reader, that he would please*

a 2

to

*\*Le Droit public, as it is called in the original, is the term in Germany, for the body of the fundamental laws of the empire; as the Golden Bull, the Imperial Capitulations, the Constitutions of the empire, &c.*



*to attend more to the subject-matter of this tract, than to the turns of the period, and the ornament of the stile; an indulgence which is actually due to an author who does not write in his own language: For I am sensible, that in such a case, the expression cannot fail of being often mixed with something of a foreign tincture; nor do I offer this, as an entertaining book, but rather, as a piece of information, from which those who will give themselves the trouble to read it, may perhaps reap some benefit, especially in the present conjuncture.*



---



---

# THE CONTENTS.

## C H A P. I.

GENERAL reflections on the nature of  
 'sovereignty; and of the government  
 'of the dominions or states, which compose  
 'one and the same body. Page 1

C H A P. II. 'A short detail of the manner  
 'how the *Germanic Body* came to be a com-  
 'pounded state, and of the principal trans-  
 'actions on this Account for three hundred  
 'years under the emperors of the house of  
 '*Austria*; shewing, 1. The limited power of  
 the ancient *German* kings; with that of its  
 bishops, dukes, counts, margraves, land-  
 graves, and burgraves; and the methods  
 taken by the popes to depress, and even to  
 depose the *German* emperors. 2. The virtue  
 of the electors in the choice of count *Rodolph*  
 of *Habsbourg*, and their corruption in ad-  
 vancing *Wenceslaus* to the imperial throne:  
 3. The character of the emperors *Charles*  
*IV.* *Albert II.* *Frederick III.* (of whom the  
 latter laid the first foundation of the vast  
 power of the house of *Austria*) and of  
*Charles V.* 4. The league of some of the  
 protestant princes of the empire with *Henry*  
*II.* king of *France*. 5. The troubles in *Bo-*  
*hemia*, and those in *Germany*, that were the  
 consequences in the dispute betwixt the empe-  
 ror *Ferdinand*, and *Frederick V.* on his election

## C O N T E N T S:

to the *Bohemian* throne. 6. How *Ferdinand's* successes alarmed *Gustavus Adolphus* of *Sweden*; and the victories of the latter at *Leipsic* and *Lutzen*, by which he repulsed and pursued the imperialists from the *Baltic Sea* to *Bohemia*.

7. How the political state of the empire was settled, and the imperial authority limited by the treaty of *Osnabrug*. Page 10.

CHAP. III. Of the *imperial dignity*, and the advantages attending the title of *emperor*.

Page 33.

CHAP. IV. 'Of the origin and number of  
'the electors who now have the right of  
'choosing the emperor, and who they were  
'that exercised it heretofore.' In this chapter  
is contained some account of the *GOLDEN BULL*, and of the right of the king of *Bohemia*, and the elector of *Hanover*, to a vote in that election; and the as yet undecided competition of the latter with the elector *Palatine*, for the title of *arch-treasurer* of the empire: To which are added, the character and conduct of the elector of *Hanover*, as well as the emperor *Joseph*. Page 40.

CHAP. V. 'Of the election of the emperor,  
'as to its manner, place, and time, and the  
'capitulation he is obliged to swear to.' Here  
is added a farther account of the *GOLDEN BULL*, of the particular prerogative of the elector of *Mentz*, as great chancellor of the empire; of the jealousy which the electors conceived of *Charles V.* after they had placed him on the throne, because he was a foreigner; of the demand of the princes and free cities, that they should share with the electors in composing the capitulation; and of the objection made by the princes of the empire  
against



# C O N T E N T S.

vii

against the precedence claimed by the electors for their ambassadors, before the princes themselves. Page 53.

CHAP. VI. ‘Of the qualifications required in the person proposed for the imperial dignity.’ — Here is inserted an account of those *observances and usages* of the empire, which form a tacit law; and an inquiry whether a *foreigner*, or a woman, may be elected; whether it be absolutely necessary that the emperor should be powerful in himself; and whether he may not be an ecclesiastic, or a protestant, or a minor. Page 69.

CHAP. VII. *Of the coronation of the emperors*, shewing when they were last crowned at *Rome*, and first at *Aix la Chapelle*; who has now the right of crowning them; what places are the depositaries of the imperial jewels; when they were first called the *Roman* emperors; what they swear at and after the consecration; why they cannot receive the sacrament in both kinds; their manner of conferring knighthood, and the attendance paid them at their coronation by the electors. Page 88.

CHAP. VIII. ‘Of the king of the *Romans*, elected during the life of an emperor to be his successor in the empire;’ shewing the signification of that title and custom. Page 102

CHAP. IX. *Of the vicars of the empire*; — with their rights and prerogatives; and some account of the dispute for that office, betwixt the *Palatine* and *Bavarian* families; shewing what provinces are in the *Franconic* right or class, and what in the *Saxon*: The distinction between the vicars of the emperor, and those of the empire, Page 110.

C H A P.

## C O N T E N T S.

CH A P. X. 'Of the feodality of the members of the empire, by which they are linked to their head, and to one another. The compatibility of this quality with sovereignty.' — Herein is shewed the origin and nature of the fiefs of the imperial crown ; how they became from being first granted only for life, to be hereditary, and the difference betwixt those that are held of the emperor, and others that are held of the empire.

Page 121.

CH A P. XI. *Of the ban of the empire, and the deposing of emperors.*

Page 129.

CH A P. XII. 'Of the imperial chamber, and of the *aulic council* established for trying the processes of the states of the empire, and thereby maintaining the public peace.' Shewing why the former was removed from *Wetzlar* to *Spire* ; the origin and progress of both those tribunals, with a parallel betwixt them ; the office of vice-chancellor of the empire ; the definition of that court, called in the *German* language, *Fursten-Raht*, and of another called, *Forum Austregarum* ; and of what is called at the imperial chamber a *Revision*.

Page 141.

CH A P. XIII. 'Of the great advantage which the emperor gains by the *aulic council* ; and of the abuses that prevail in it, particularly those affecting the protestants.'

Page 164.

CH A P. XIV. 'Of the right of the subjects of the empire to have recourse in some cases to the tribunals of the empire, as well by way of appeal from a sentence passed against them in their respective sovereign's tribunal, as upon account of any grievance suffered by his government.'

Page 173.

C H A P.

CH A P. XV. ‘ An examination of the emperor’s *reserved rights*, with an account of their  
 ‘ restrictions, and of the advantages he derives  
 ‘ from the particular prerogative of conferring  
 ‘ titles and dignities ; and in the case of unequal marriages. With the reasons for the  
 ‘ advancement of the HANOVER family to the  
 ‘ electoral dignity. *Page 182.*

CH A P. XVI. ‘ Of the general dyets of the  
 ‘ empire, and of the ordinary and extraordinary deputations ;’ shewing the dignity and  
 function of *first commissioner* to the dyet, from  
 the emperor ; and the rights and prerogatives  
 of the elector of *Mentz*, in the general direction  
 of it’s affairs ; with an account of it’s  
 three colleges, and six benches. An observation  
 of certain cases which must be accommodated  
 amicably, because they cannot be decided  
 there by the majority of votes ; and a definition  
 of what is called the *Recessus*, or recess  
 of the empire. *Page 199.*

CH A P. XVII. ‘ Of the principal matters that  
 ‘ are laid before the *dyet*, and of the recourse  
 ‘ which the *States of the empire* may have to  
 ‘ that assembly, when they have been aggrieved  
 ‘ by the sovereign tribunals of the empire.’  
 In this chapter are discussed the right of resolving  
 upon a war, the appointing a general, and  
 building fortresses ; and in what cases a prince  
 of the empire may observe a neutrality ; together  
 with the contributions and subsidies, under  
 the term of contingent, settled by the matriculas ;  
 and the concurrence that is requisite for making  
*alliances*, and sending *embassies*.

*Page 219.*

CH A P. XVIII. ‘ An historical detail of the  
 ‘ manner in which the states of the empire have  
 ‘ concurred



‘ concurred in treaties of peace, with foreign  
 ‘ powers, since the treaty of *Westphalia*.’ To  
 which is added, an account of those called the  
*chambers of re-union*; with some remarks on  
 the congresses at *Osnabrug*, *Munster*, *Ryswic*,  
 the *Hague*, *Rastadt*, and *Baden*, for a peace.

Page 230.

CHAP. XIX. ‘ Of the *evangelic body*, and  
 ‘ the right which it has to protect all those  
 ‘ in the empire, who suffer for the protestant  
 ‘ cause;’ with other advantages of that associ-  
 ation: To which are added, an account of the  
*league of Smalcald*; of the political reason  
 why the protestants have not deprived the elec-  
 tor of *Saxony* of the direction of their affairs at  
 the dyer, though he has embraced the popish  
 religion; and of the stipulations in the *Osnabrug*  
 treaty, with regard to the protestants of the em-  
 pire.

Page 240.

CHAP. XX. ‘ Of the electors, princes, and  
 ‘ other states of the empire, considered as for-  
 ‘ ming separate bodies in the empire; and of  
 ‘ their particular assemblies.’

Page 263.

CHAP. XXI. Of the division of the empire  
 ‘ into ten circles; and of their internal regula-  
 ‘ tions;’ shewing the functions of the director  
 and duke of each circle; who they are at this  
 time; which are the *corresponding circles*; and  
 why so called.

Page 271.

CHAP. XXII. ‘ A succinct account of the  
 ‘ causes which disunite and weaken the *Germa-  
 ‘ nic Body*; and of the advantages that would  
 ‘ redound, both to the head and the members,  
 ‘ if they all made use of their power, pursuant  
 ‘ to the public constitutions, and to the natural  
 ‘ intent of them.’

Page 279.

T H E




T H E  
P R E S E N T  
G O V E R N M E N T  
O F T H E  
*Germanic Body.*

---

C H A P. I.

*General reflections on the nature of sovereignty; and of the government of the dominions or states, which compose one and the same body.*

- I.  S these reflections on the present government of the *Germanic Body*, tend to prove, that the different states, which are a part of it, form so many real sovereignties, I could not help making some preliminary remarks on the nature  
A of,

## The GOVERNMENT of the

of sovereignty in general; to prevent any ambiguous construction from being put upon that term, and to illustrate my own sentiment.

II. What I therefore here mean, by the word *sovereignty*, is a right of governing civil society, in such a manner, that what is ordered and undertaken for it's security and advantage, whether at home or abroad, has no need of the approbation of a superior to give it force; and cannot be corrected, repealed, or annulled, by any one whomsoever, in virtue of a superior authority in the state.

III. From this definition, which is taken from the nature and end of civil society, it appears, that the person who is stiled a sovereign, must be independant of all other human authority, with regard to the exercise of the rights or prerogatives, which every government demands, or expects, in the person or persons of him or those who govern.

IV. But it is by no means necessary to the quality of a sovereign, that the person, to whom the government of a state has been committed, should exercise the rights of sovereignty, in an absolute manner; that is to say, without being obliged to conform his resolutions and undertakings, to certain fundamental



damental laws, that are agreed upon with him; or, to call a diet or parliament, in order to hear it's advice, and require it's consent in such things, as the laws require should be brought before it.

V. Since therefore it is not incompatible with the nature of sovereignty, to admit of certain restrictions, in the exercise of it, there is nothing that hinders a prince, tho' he has some bounds to observe in the exercise of the rights that flow naturally from sovereignty, from being really a sovereign, so long as he has the sole command in his own dominions, in the dernier resort, and so long as the regards which he is obliged to have for another potentate, do not disable him from doing what the good of his country absolutely demands. The most absolute prince in the world enters sometimes into engagements of this sort, by public treaties; and no body will maintain, that those treaties deprive him of the sovereignty while they subsist.

VI. I do not therefore look upon a prince, as degraded from sovereignty, who possesses a country by the denomination of a fief; nor do I look upon any state in that light, which has put itself under the protection of any other: because these conditions do not,

*The* GOVERNMENT *of the*  
 of themselves, hinder the exercise of the rights  
 of sovereignty. All that they require of such  
 a potentate is, that he conduct himself in  
 such a manner, as not to violate the fidelity  
 by which he is engaged to the power of  
 whom he holds, and to do nothing to the  
 prejudice of the right, which he has reserved  
 to himself, with regard to his fief. There  
 can be no better proof of this, than the in-  
 stance of the king of the *Two Sicilies*, who  
 is a feudatory of the holy see, and of many  
 other princes of *Italy*, who acknowledge  
 themselves to be vassals of the holy empire,  
 since no body disputes their sovereignty, or  
 any of the essential rights thereto belonging.  
 I shall shew, in the sequel of this discourse,  
 that this same observation is likewise appli-  
 cable to those dominions, which the mem-  
 bers of the *Germanic Body* possess, under the  
 denomination of the fiefs of the empire.

VII. Nor can a state, which has put itself  
 under the protection of another, be looked  
 upon to be by such an act deprived of so-  
 vereignty: on the contrary, it is supposed to  
 have sought for that protection, the better to  
 secure it's liberty against those from whom  
 it apprehends an unjust force. And tho' it  
 be obliged to have some regards for it's pro-  
 tector, and to concede such distinctions to  
 him, as constitute a certain inequality betwixt  
 them,

them, such inequality does not hinder that state from being it's own master, within itself, and from having the sole right of governing the countries or territories in it's possession: and, if it has an apprehension, at any time, that it's protector will some day or other become it's master, (as is but too often the case) then it will be owing to his weakness, and not to his condition, as a client.

VIII. This reflection induces me to make mention of the difference, which the disparity of forces naturally constitutes between two states that are equally sovereign, in the exercise of that part of the rights of sovereignty which ought to be exerted abroad; such, for example, as the prerogative of sending ambassadors, and that of conferring dignities to be respected in all places whatsoever. And tho' the princes and republics, whose power is very much limited, cannot exercise those prerogatives, in the same latitude as crowned heads do, is such disparity any reason for disputing their sovereignty?

IX. When all is said that can be, all politicians are agreed with me, that sovereignty does not change it's nature, by the difference of title from him who is vested with it; nor by the difference in the form of government, tho' such sovereignty appears more illustrious



# The GOVERNMENT of the

in monarchies, and those especially, where the power of the monarch is absolute. There are certain conjunctures, wherein the person who has actually seized the government of a state, takes care to shelter the power to which he has attained, under some title which conceals a part of it; and considering the condition to which the *Germanic Body* is reduced, by the revolutions of which I shall give an epitome in my next chapter, it was proper that they who now compose it, as so many states of different power and grandeur, should not change their old titles; and that they should thereby keep up a difference of rank between themselves, as well as a due decorum to their common head. The electors, and some other princes of the empire, often give to the great seal, which they affix to their patents, the name of their *seal of majesty*; and there are publick treaties, in which mention is made, of the *majesty of the states of the empire*; but the sovereign power, which they enjoy, is commonly specify'd by the modest stile of *territorial superiority*.

Pfeff. vi.  
triar. il-  
lustr. lib.  
i. tit. 4.  
Corps D.  
pl. vi. p.  
50.

X. I flatter myself, that the observations, which I have now made, will throw great light upon what I shall have to say hereafter, concerning the state of the different members of the *Germanic Body*, commonly called  
the

the states of the empire, by reason of the right which they have to sit in the general diet, where the affairs of the empire are treated of; and there to give their suffrage, in whatsoever concerns the common benefit of this vast body.

XI. I pass now to consider the nature of the dominions which all together compose one and the same body; because it will appear from the sequel of my remarks, that the empire ought to be ranked in the number of those *compounded* or *confederated* dominions; if it be necessary, to express the form of the government of a country, by a name borrowed from the politicks of *Greece*. For perhaps it were to be wished, that there never were any dispute, about the appellation to be given to the form of the government, which is established in a state, by the laws; because those same laws are a sufficient indication after what manner the sovereign power ought therein to be exercised; and how the several orders of the state ought to concur to it; whereas, the terms, monarchy, aristocracy, and democracy, only convey general and vague ideas of the nature of the government of a country, by reason of the different modifications to which each of those three forms is liable. History, both ancient and modern, informs us, that a

A 4

people,

## The GOVERNMENT of the

people; jealous of their liberty, are often more disgusted at the title which is given to the government of a country, than at the government itself. The title of king, whereof *Julius Cæsar* was so ambitious, rendered him more odious to the people of *Rome*, than the regal power which he had usurped; and *Cromwell* would have had the same fate, if he had lived long enough to put the project in execution, which he had formed, to procure himself the title of king, instead of that of protector; which was not so disgusting to the republican party.

XII. The essential qualities of a confederated state are these two, viz. 1. That the different states, which form one and the same body betwixt them, preserve each their sovereignty, and particular government. 2. That the affairs which relate to the security and welfare of the whole Body, be treated of in a general assembly, where each individual may have a decisive voice.

XIII. These states are formed, either by an *express convention*, when they, who enter together into such confederacy, have a manifest and declared intention to consider themselves thereafter, as one and the same body, on the foot that I have been stating it; or, by a *tacit convention*, when in a great empire, com-



composed of several provinces, depending all upon one single monarch, it so happens by several revolutions, that they, who were before no more than barely governors of those provinces, become insensibly their sovereigns; in such a manner, nevertheless, that the league which was between such provinces heretofore, is not intirely broke, but still continued under another form; so that he who was formerly the sole sovereign of all those provinces, is no more now than the head of the confederacy. It is in this view that we are to exhibit the present state of the *Germanic Body*, in the following chapters.

XIV. It is easy to foresee, that in a confederated state, so formed as above, several irregularities must occur, which do not happen in such as are founded on an *express convention*, wherein there was an opportunity of providing, at the first, for every thing that was conducive to the end proposed to themselves: whereas great empires, which fall by degrees, to the state which I have been describing in general terms, do a long time retain somewhat of their ancient form.

XV. To prove therefore, that the *Germanic Body* ought to be ranked in the class of confederated states, it will be sufficient to shew, that it has the *essential parts* thereof; because

because there is no necessity, that it should entirely resemble either those that subsisted formerly in Greece, or that in particular, of which we have the best model, at this juncture, in the united provinces of the Netherlands.

## CHAPTER II.

*A short detail of the manner how the Germanic Body came to be a compounded state, and of the principal transactions, on this account, for three hundred years, under the emperors of the house of Austria.*

**A**T the time that Germany became a separate kingdom, by the partition of the monarchy of the Franks, under the sons of Lewis the debonair, son of Charles the great, it's government was truly monarchical: but the power of it's kings was so limited, that they could undertake nothing of importance, without the consent of the heads and principal men of every province in the kingdom. Among these principals, I reckon not only those, to whom the direction of the spiritual and temporal affairs was committed in those provinces, on the part of the king and the state; but those lords also who were immediate vassals of the crown.

The

The spiritual were administered by the bishops, and the temporal by the dukes.

II. The duke was next to the king, the head of an entire province: his principal care was to see good order observed, and tranquility maintained, both at home and abroad: he summoned and directed the particular diets of his province: the vassals of the crown assembled under his standard, when there was a necessity for going to war; and they incamp'd round him, in the general diets of the empire, which were usually held in the open field.

III. The counts, or *graves*, as they were called in *Germany*, were charged with jurisdiction in the province; but there was an appeal from their sentence to the king's court; which we shall treat of more largely, when we come to speak of the present state of the supreme tribunal of the empire. He who presided in the chamber of justice, at the king's court, was called *pfaltzgrave*, or count palatine.

IV. In process of time, there were also in many provinces, *margraves*, *landgraves*, and *burgraves*. The *margraves* were they who were established on the frontiers of a kingdom, partly for their defence against the incursions



The GOVERNMENT of the

incursions of the neighbouring nations, and partly for the administration of justice. The *landgraves* were counts set over a country superior in extent to the district which was generally assigned to a meer count. The *burghaves* were they, who in the king's name exercised jurisdiction, and other royal rights, in the burghs or castles which the kings possessed in the towns immediately subject to the crown, and in which they resided when they made any stay in a province, their court not being fixed heretofore, but itinerant.

V. As the dukes represented the king after a particular manner, in the provinces which they had to govern, they did there, in conformity to the sovereign's will and pleasure, and to the constitution of the kingdom, keep a very splendid court, and furnished almost with the same officers, as the king had at his court; especially when they held the petty diets of their province.

Coccej.  
J. P. c. 11.

VI. The bishops imitated them in this, as soon as they began to meddle in temporal affairs, and to be disengaged from those advocates that were formerly given to the churches, either for their defence, or for the good management of the estates with which all

all people almost, at that time, laboured to endow them, for the salvation of their souls.

VII. At first, the king disposed of all temporal offices, as well as the spiritual ones, according to his will and pleasure; and they never descended to the children of the deceased, but when it pleased the king to invest them therewith, either in respect to their own merit, or as a reward for the services of their ancestors.

VIII. But what the kings had done in some cases, out of meer favour, soon became acts of necessity. The disturbances that happened in the reigns of *Lewis the debonair* and his descendants, were the first opportunity the dukes laid hold of, to maintain themselves in the possession of the duchies, as a part of their inheritance: and the kings were obliged to humour the dukes, that they might continue to behave well; and to suffer the offices of the fathers to devolve to their children, for fear, lest they should take part with the enemy.

IX. These methods, which the dukes took to render their offices hereditary in their families, contributed very much to the increase of their authority; but they became still more powerful when the race of *Charlemagne*

*magne* was extinct in the empire. *An. 911.* *Conrard*, duke of *Franconia*, having been placed at that time on the throne by an election which was entirely free, the dukes then began to behave as absolute masters of the dominions only committed heretofore to their government, and thought themselves only obliged to respect the king as the head of that body of which they were the principal members, and to undertake nothing against the general good of the whole empire.

X. *An. 919.* *Conrard* having in vain employed force to reduce them to their antient dependency, *Henry*, duke of *Saxony*, who ascended the throne after him by a new election, chose rather to incline them by fair means to acknowledge his supreme authority in the affairs of the empire, than to fortify them in their resistance, by treating them merely as subjects.

XI. The glory of re-establishing things in their pristine state, seemed to be reserved for his son and successor *Otho I.* because he had an opportunity of increasing his power by the conquest of the antient kingdom of *Lombardy*, and of annexing the imperial dignity to that of king of *Germany*. *An. 936.* But his reign was full of troubles, and such as were the more grievous, because they were owing to the



the ambition of the princes of his family, and as much to the disturbance of *Italy* as *Germany*.

XII. The popes likewise after that time did all they could to thwart the designs of the emperors and to weaken their power, because the right which the latter had required to fill *St. Peter's* chair, and to keep that person in their dependance whom they had raised to it by their nomination, checked the aggrandisement of the court of *Rome*.

XIII. After long intrigues, the popes got the emperors deprived not only of the right of electing the visible head of the church, but even of appointing the bishops. This accident gave the strongest shock to the power of the emperors in the provinces of the empire, for from that time the spiritual princes took as much pains as the temporal princes, to ingross the most essential rights of sovereignty into their own hands. Several bishops were possessed of very considerable ones after *Otho the great* began to give the government of duchies and counties to his brother *Bruno*, archbishop of *Cologne*, and his son *William*, archbishop of *Mentz*. By giving temporal dignities to the ecclesiastics, it was no doubt his intention to hinder them from becoming altogether hereditary; for he did

1122.

Struvii  
Synt. Jur.  
Publ. c.  
18. § 10.  
11.

did not foresee that a time would come when the right of disposing of bishops and other benefices would be wrested from his successors.

1076.

XIV. The efforts made by *Henry IV.* to maintain himself in the possession of a prerogative, which was the fairest jewel of his crown, cost him very dear. Pope *Gregory VII.* was so daring as to fulminate excommunication against him; and he timed it so well, that it was immediately followed by the act of deposing that emperor, in which most of the princes of the empire willingly concurred, for the better establishing their sway in their own respective dominions, and that the succeeding emperors might know the limits by which their authority was confined in the provinces.

177.

XV. All the emperors, who from that time endeavoured to re-establish things on the antient footing, failed in the attempt. The thunder of the vatican, which was sometimes preceded, and at other times followed by the rebellions which the court of *Rome* was artful enough rather to excite or to foment, crushed the most potent of the emperors. All that *Frederick I.* was able to do in the empire, after having been forced to trundle in *Italy* to the pope, and to the cities that were

were combined against him, was to humble by a proscription *Henry*, surnamed the *Lion*, duke of *Saxony* and *Bavaria*, to whom he imputed the ill success of his arms on the other side of the *Alps*: and he carried this point by the concurrence of the princes to whom he offered the ducal dignity, and of those in general to whom he gave part of the spoils of his enemy, in the number of whom were likewise the bishops, counts, and free cities of those two provinces wherein the power of the new dukes was by that means very much diminished.

XVI. The broils of *Frederic II.* with the court of *Rome* were yet more fatal. The rage of the popes against that emperor was so great, that he thereby lost his crown: he died, as did his children, of a violent death; and as his family, then possessed of the ducal dignity in *Franconia* and *Swabia*, was extinct at the time that the empire was without a head, those two provinces were distracted by the disputants for the spoil of that unfortunate family, and were filled with that great number of lords and free cities which we now find there.

XVII. Then indeed the empire was in a sad state of anarchy, either because that, after the death of *William* of *Holland*, nobody

B

cared



cared to undertake the government of a country where the power of the kings was become so precarious; or because the great men themselves chose to live without a head. Which of these soever was the cause, every one then did what he thought fit, and the weak had no other way to secure themselves from being intirely oppressed, than by forming leagues, or putting themselves under the protection of some powerful neighbour. The great ones commonly decided their quarrels *vi et armis*. In a word, every one put in for a share of the small remains of the rights and revenues of the emperors, both in the provinces and towns.

XVIII. The evil growing worse every day, they were at length forced to proceed to a new election of a common head. But the princes, who then began to assume to themselves the right of making such election, in the name of the whole empire, took care that it should not fall upon any one that was very powerful before. They were content to chuse count *Rodolph*, of *Habsbourg*, who had all their suffrages; because they thought him possessed of all the necessary qualifications for putting those things in execution, which he should concert with the states of the empire; and for which they should be ready to give him their assistance.

XIX.

XIX. As the care of thus preserving a sovereignty in their own country, compatible with the nature of a confederated body, determined the electors, more than once, to advance mere counts only to the imperial throne, the same motive made them cautious also, at first, not to continue the imperial dignity in the same family, without necessity: but to persist in this wise maxim it was impossible, if the majority of the electors ever deviated from their main interests, and those of the *Germanic Body*; whereas they shamefully made it appear, by the election of *Wenceslaus*, who became the scandal of the empire, that money and other private advantages were capable of diverting them sometimes from their duty.

XX. *Charles IV.* who had bribed them in the election of his son, was in a fair way to succeed in his design of perpetuating the imperial dignity in his family, if the male issue had not failed, by the death of his son, the emperor *Sigismund*. The house of *Austria*, on the contrary, enjoyed this advantage for three hundred years successively.

XXI. The imperial dignity reverted to this house, by the election of *Albert II*, who was already advanced to the throne of *Hun-*

1437.

# The GOVERNMENT of the

*gary* and *Bohemia*, by means of his marriage with the said *Sigismund's* daughter, before he was emperor. The world had entertained a high notion of him, from the plan which he had formed, for the tranquillity of the empire; and for giving it strength, by a good harmony betwixt the members and the head of it; but he was cut off by an untimely death, when there was the fairest hopes of his success.

1440.

XXII. *Frederic III*, his near kinsman, whom the electors chose in his room, kept so little in the path of his predecessor, that he rendered himself very contemptible, by the broils which he raised in his own family, and by his misbehaviour in the empire; so that the electors had thoughts, more than once, of associating another head with him; thereby to remedy the disorders into which things were fallen, by his indifference, and by his leagues with the court of *Rome*, to the very great prejudice of the dignity of the empire in general, and of the liberty of the *Germanic* church in particular.

1478.

XXIII. This prince however, so little as he was esteemed, both at home and abroad, by marrying his son *Maximilian* with the rich heiress of the duke of *Burgundy*, *Charles the hardy*, laid the first foundation



THE GOVERNMENT OF THE  
**GERMANIC BODY.**

21

foundation of that vast power, to which his family rose from thenceforward, with a most rapid progress. Tho' expelled from his own dominions by the king of *Hungary*, and forced to wander through the free cities of the empire for a subsistence, he had however the happiness to see the electors all at once united in advancing his son to the dignity of the king of the *Romans*; whether it was owing to their compassion of his melancholy condition, or to their opinion; because of the aversion of the *Netherlanders* to *Maximilian*, after the death of his wife, that he would not, in his own person, make any use of the advantages that were entered into his family; and therefore conceived no jealousy of him.

1486.

XXIV. The states of the empire had, indeed, so little reason to complain of this prince, that they found him on the contrary, in the beginning of his reign, very well disposed to give his consent to the establishment of the imperial chamber, of which we shall treat hereafter; and to other regulations which were made at that time, in the dyet, for suppressing those acts of violence, that had till then been practised in the disputes between the princes of the empire, and for the firm and universal establishment of the public tranquillity and safety.

1495.

The GOVERNMENT of the

XXV. The reign of *Charles V*, who was *Maximilian's* grandson was, on the contrary, very formidable to the liberty of the *Germanic Body*. One would have imagined, that, after the death of *Maximilian*, the electors would have thought it proper to have placed the imperial crown on the head of one of their own number; and the court of *Rome*, which conceived as much umbrage at the great power of the emperors, as the *Germanic* princes did, caused this advice to be hinted to them; but considerations, too many to be particularized here, made the election fall upon a prince, who seemed at that time the most formidable.

1546.

1547.

XXVI. They thought to check his power in the empire, by making him swear a capitulation, which clearly settled the manner how he was to exercise it: But this capitulation was little regarded, as soon as the emperor found himself in a condition to despise it without any fear. The religious disputes owing to the reformation, having furnished him with an opportunity to fall upon the protestants; the overthrow of their leaders, who became his captives, already seemed to be a prelude to the oppression of the liberty of the *Germanic Body*, when a new party was formed among some protestant princes of the empire;

## GERMANIC BODY.

23

1551.

empire; which, being supported by an alliance with *Henry II.* king of *France*, deprived the emperor, all at once, of the fruit he hoped to reap from his long intrigues, and compelled him to subscribe to a peace, first at *Passau*, in 1553, and afterwards at the dyet of *Augsbourg*, in 1555; which, at the same time that it secured the freedom of religion to the protestants, restored a good harmony among all the members of the *Germanic Body*, and thereby strengthened the foundations of their civil liberty, which had been very much shaken.

XXVII. From this dangerous revolution, a new advantage accrued to the sovereignty of the princes of *Germany*: they began to pry more narrowly into the nature of the supreme authority of the emperors over the states of the empire; as well as into the dependency of the latter, with regard to their common head. The result was, that it was free for the states to contract alliances, not only among themselves, but with foreign powers, for the defence of their liberty spiritual and temporal; and that they ought, by no means, to be deemed as real subjects of the emperor. In conformity to this maxim, founded on the nature of the government of the empire, the protestant states of *Germany*, without farther hesitation, entered, at this very time, into



such negotiations and treaties with foreign courts, as were proper for maintaining their freedom.

XXVIII. There was then nothing more wanting, to put the sovereignty of the princes of the empire, in their own dominions, out of all manner of dispute, than for the emperors themselves publickly to acknowledge it. The peace of *Westphalia* (which is also called that of *Osnabrug*, or *Munster*, as being but one treaty, though with these three names) procured them this advantage; but, just before this treaty, there was a new revolution, the beginning of which was so far from promising those princes a happy issue, that it threatened them, on the contrary, with the sudden loss of what they had hitherto gained with so much difficulty.

1605.

XXIX. The house of *Austria*, in the reign of *Rodolph II*, had just taken new measures for the preservation of the imperial crown in that family, and their design was to make it descend to the archduke *Ferdinand* of *Stiria*, when there arose in *Bohemia*, during the reign of the emperor *Matthias*, such unhappy troubles betwixt the catholics and protestants, as had like, at one stroke, to have overturned a plan so well concerted. *Ferdinand*, whom the *Bohemians* had

1618.

had been induced to recognize for their future king, in order to pave his way to the imperial dignity, rendered himself so odious among those of the protestant party by his conduct at the breaking out of those troubles, and by the severity he had before exercised in his own country to those of the *Augsbourg* confession, that the *Bobemians* would no longer own him for their king; and in their rebellion they not only drew into their party all their brethren in the duchy of *Silesia*, which was associate to *Bobemia*, but all those also who were at that time scattered up and down in *Austria*.

XXX. *Frederick V*, elector palatine, being prevailed on to accept the crown which was offered him by the *Bobemians*, at the time when *Ferdinand* was just elected emperor, *Germany* was soon involved in these troubles. For the latter was not content with driving his antagonist out of *Bobemia* after the compleat victory he gained over him in the battle at *Prague*; but, confounding his quality of emperor with that of king of *Bobemia*, against whom he thought he might fairly be at war, without contravening his duty to the former, he thought himself authorized to put him under the ban of the empire, without any form of process, and to deprive him of the electoral dignity, in favour  
of

1621.  
1623.

of the duke of *Bavaria*, who had assisted him to triumph over his enemy.

XXXI. *Ferdinand*, flushed with this success, extended his arms over all *Germany*, on pretence of pursuing the adherents of a prince, who had been declared a rebel. This conduct opened the eyes of those who had all along suffered themselves to be persuaded, that the emperor desired nothing more than to suppress the flames of rebellion in his own dominions: But it was very difficult to prevent the consequences which they now foresaw. The danger became also still greater, by the miscarriage of the armament in the circle of lower *Saxony*, which, for it's greater guard against violence, had placed the king of *Denmark* at it's head, in quality of duke, or commandant, of the troops of the circle. *Ferdinand* causing his troops, and those of the catholic league, to march against the confederate princes, gained a complete victory over them, which rendered him master of all lower *Germany*, to the banks of the *Baltic*.

XXXII. Every thing then seemed past all hopes; and indeed the evil would have been quite remediless, if the emperor had but checked his ambition, and not alarmed the king of *Sweden*, by the projects which he formed



formed against that prince. This monarch was already roused, by the sight of his own danger, to hasten to the assistance of the *German* princes who were threatened with being soon made slaves: but what still more encouraged the great *Gustavus Adolphus* to so noble an undertaking, were the vehement solicitations of the court of *France*, which was just awakened out of it's slumber, during the ministry of the cardinal *de Richelieu*. This crafty politician had already begun in *Italy* to break the projects of the court of *Madrid*, then in strict union with that of *Vienna*; and, by promising the king of *Sweden* large subsidies for the war, he effectually determined him to give a diversion to the imperial arms in the empire.

XXXIII. The progress which this northern hero made, as soon as he set foot in *Germany*, is too well known for me to insist on it. His presence there put a new face upon every thing. The imperialists were repulsed and pursued, from the *Baltic* sea to *Bohemia*; and the king of *Sweden*, after having defeated them at *Leipfic*, marched through all *Germany*, to relieve the protestant states there, and to drive out the troops of the enemy.

XXXIV.

1632.

XXXIV. A second victory which the *Swedes* gained over the imperialists at *Lutzen*, would have compleatly opened the way for their sovereign to *Vienna*, if his own impatience, or rather a perfidious hand, had not deprived him of his life, at the beginning of the battle. His death was astonishing to *Sweden* for a while; but that nation having resolved at last, not to put an end to the war, without honour to itself, and the advantage of it's allies, it's affairs were so well conducted by the count *d'Oxenstern*, the most consummate statesman of his age, that neither the jealousy of the elector of *Saxony*, who envied *Sweden* the direction of the protestant affairs, nor the secret intelligence which that prince held with the court of *Vienna*; nor his own rupture with *Sweden*; nor the indirect practices of the minister who then governed *France*, could disconcert his plan: And, even after the total rout of the *Swedes* at *Nordlingen*, the count so artfully drew *France* into the war with the emperor, that from that time she was obliged to make every thing a common cause with *Sweden*.

1634.

XXXV. The strict union betwixt these two powers forced the emperor *Ferdinand III*, at last, to a peace, by which he was obliged to sacrifice a part of his dominions, with a yet

yet greater share of his authority and power in the empire. On the other hand, this advantage redounded from it to all the states of the empire in general, that, being supported by *France* and *Sweden*, they were all invited to the congress of the peace at *Osnabrug* and *Munster*, as parties in the war; and thereby put into a condition to take the properest measures, in conjunction with those crowns, to establish their sovereignty, and their right of concurring, as true members of one and the same body, united under one common head, with all the deliberations and resolutions on affairs relating to the general good of the empire.

1648.

XXXVI. The eighth article of the treaty of *Osnabrug* leaves no doubt upon that head; these are the very terms of it: "For preventing any disputes that might arise for the future, in the political state, all and every of the electors, princes, and states of the *Roman* empire, ought to be confirmed, by virtue of this treaty, in their ancient rights, prerogatives, freedom and privileges, in the free exercise of their territorial right, in matters ecclesiastical and political, in their dominions, in their rights of regale, and in the possession of all these things together, that no person may



*The* GOVERNMENT *of the*

“ may have it in his power or choice to  
 “ give them actual molestation, on any pre-  
 “ tence whatsoever.

“ They shall without any contradiction  
 “ enjoy *the right of suffrage, in all delibera-*  
 “ *tions concerning the affairs of the empire ;*  
 “ particularly, when laws are to be made, or  
 “ interpreted, war to be declared, contribu-  
 “ tions to be imposed, levies of troops to be  
 “ made, and their quarters regulated, new  
 “ fortresses to be erected, in the name of the  
 “ public, in the territory of the states, or  
 “ garisons to be placed in the old ones ;  
 “ as also, when any treaties of peace or alli-  
 “ ances are to be concluded, or any other af-  
 “ fair of this nature to be treated of. None  
 “ of these things, or others of the like kind,  
 “ shall be undertaken or permitted, without  
 “ the suffrage and free consent of all the  
 “ states of the empire assembled at the dyet.  
 “ They shall each have, above all things,  
 “ the perpetual *right of making alliances be-*  
 “ *tween themselves and with foreigners,* for  
 “ their own preservation and security : pro-  
 “ vided nevertheless, that such alliances are  
 “ not aimed against the emperor and em-  
 “ pire, nor against the public peace, nor  
 “ against the present transaction in particular ;  
 “ and that they do not in any wise infringe  
 “ the oath, which they have all taken, to the  
 “ emperor

“Imperor and empire.” What I shall have to say hereafter, as to the government of the empire, will be, in a manner, a commentary on the article which I have now quoted.

XXXVII. As it was of very great importance to *France* and *Sweden*, in order to be in safe possession of what they had just gained by this peace, that the emperors should not have it in their power to undertake any thing of consequence, without the consent of the states of the empire, these crowns thought themselves very happy, in having thus limited the imperial authority. They also took care to have it inserted in the XVIIth article, sect. 5 and 6, that all the parties in this peace, *omnes hujus pacis consortes*, should be the guarantees of it; to the end that the states of the empire might have the liberty of imploring their assistance, when they should happen to be disturbed by any power whatsoever, in the possession and exercise of any of the rights which they had now acquired by this treaty: provided nevertheless, “That the party injured had first  
 “endeavoured to obtain a redress of his  
 “grievances from the aggressor, by an amicable accommodation, or by a course of  
 “law; and that three years should elapse,  
 “before these expedients had operated.”

XXXVIII.

XXXVIII. The princes of the empire, on the other hand, made so good an improvement of their right to conclude alliances, between themselves, and with foreign powers; that, since that time, we have seen the chief of them almost always armed, and interesting themselves, not only in the affairs of *Europe*, but even governing at home, with so much power, that their sovereignty could no longer be called in question.

XXXIX. It will no doubt be remarked, that in the brief detail which I have now given, of the revolutions which have procured the empire the essential consistency of a confederated body, by the decay of the imperial authority, and by the increase of the power of the states of the empire, I have only spoke of the princes spiritual and temporal; and that I have but demonstrated in few words, that the proscription of *Henry the lion*, the extinction of the dukes of *Francia* and *Swabia*, and the disorders of a long interregnum, were favourable to the counts and free towns: to this I might also have added, the wealth that the cities acquired by commerce, and the alliances which they formed among themselves, for maintaining their right of appearing at the dyets. My opinion therefore is, not that the territorial



*territorial superiority* is less founded, and in itself less compleat, in these second members of the empire, than in those of the first class. But in order to shew my ideas, as to the government of *Germany*, I thought it was necessary, that I should consider the sovereignty of the states of the empire, not in those, who by reason of their weakness are obliged to suffer many things, which infringe their sovereign power at home; but in those who are in a condition to defend their right, either by themselves, or by good alliances with their neighbours, and who are capable of making a figure; or, at least, of interfering in some things in the affairs of *Europe*.

---

## C H A P III.

*Of the imperial dignity.*

I. **H**AVING in the foregoing chapter shewn, how fatal the imperial dignity, which the kings of *Germany* constantly possessed, after *Otho the great*, was to their authority in *Germany*, it is but just, that I should also make mention of the advantages, which the title of emperor procured them, though by far inferior to those, which upon this occasion they lost.

C

II. *Otho*,

## The GOVERNMENT of the

II. *Otho*, and his successors, having promised, when they received the imperial crown at *Rome*, that they would defend the honour of the popes, and of the *Romish* church, the court of *Rome* thought it but just, that the person who entered into those engagements, and thereby became the advocate and the protector of the church, should also have the first rank among the potentates of *Christendom*.

III. The popes ever thought it adviseable, that all *Christendom* should be considered, as one sole republic, of which they were the spiritual heads, while the emperors were it's temporal heads. Several constitutions of the empire give the title of head of *Christendom* to the latter, and the *golden bull* (of which more will be said hereafter) charges the electors to chuse an emperor, to be the *temporal head of the christian world*.

Tit. ii.  
Sect. 3.

IV. In consideration of this quality of the emperors, formerly recognized by the christian princes, we have seen, that such of them, as aspired to the title of king, began, by applying to the emperor to honour them with it; and that, after they had obtained it of him, the other christian powers were ready to subscribe to it. We find also, that anciently the emperors were received in foreign

reign countries with distinctions that shewed their pre-eminence above all other crowned heads. Nothing is a better proof of this, than the precautions that were taken, at the time when the ancient splendor of the emperors was very much diminished, for giving *Charles IV.* all those distinguished marks of honour in *France*, which used to be paid to the emperors, wherever they passed.

V. It is true, that those notions of the state of *Christendom*, and the imperial dignity, are now intirely obliterated; to which the popes themselves have contributed not a little, by first leaving off that respect, which they paid in the beginning, to the emperors, as the protectors of the church; and by exercising their spiritual authority over them, with so little regard to their dignity, that, being forced to stoop to them, they therefore became the less respected by others.

VI. The emperors nevertheless maintained their right of precedence before all the kings of *Christendom*, and it was with difficulty, that they consented, at last, to give them the title of majesty, in the room of that of *serenity*, which was all they gave them formerly. It may even be said, that, if some of the emperors had not been desirous of pushing certain prerogatives too far, the kings might



## The GOVERNMENT of the

have suffered them to enjoy the same, without derogating from their natural equality; and that, perhaps, they would not have so stiffly opposed their pretensions; but by the emperor's exacting them, much rather as a due, than as an act of complaisance, founded upon ancient custom, they happened to meet with princes, who thought it was a dishonour to them, to be unequal, in the marks of honour, to him whom they equalled in power.

VII. The lot of the emperors was much more happy, upon this account, in the empire. Those princes whom we represented in the foregoing chapter, as so attentive to share the government of the *Germanic Body* with their head, have made no scruple, hitherto, to grant his imperial majesty those distinctions and honours, which would seem incompatible with their sovereignty, if it were not known, that the most potent emperors heretofore made profounder submissions to the popes, than those, which the members of the empire now pay to their head; and that the present emperors would do the same, if they happened to meet together.

VIII. It is nevertheless certain, that the imperial dignity, with which the kings of  
*Germany*

Germany were vested, the profound veneration that was paid to the majesty of the ancient Roman empire, at the time that I am speaking of; and the high idea of that dignity, with which the popes strove to possess all the christian princes, while they made a handle of it, in their turn, to serve their own interests: it is certain, I say, that all these advantages induced all the princes of the empire, to treat their head with greater distinction than they did before; and accustomed them insensibly to a ceremonial, which at first disgusted them; as they made appear to *Otho III*, who, when at *Quedlinbourg*, where he held a solemn court, and where the dukes performed the functions of their great offices to him, caused a separate table to be spread for himself, in the form of an half-moon, and raised one step higher than that at which he regaled those princes. They thought this distinction was too derogatory from their quality of adjuncts to the government, *Coinperantes*, which was the title that had been before given them, in the reign of *Lewis I*, in the capitularies and public acts of that emperor.

Ditma.  
lib. iv.

IX. I have already observed elsewhere, that considering how the *Germanic Body* came to assume it's present form, it must necessarily retain several features of the ancient

monarchical government. It even seemed necessary to the consistence of a body composed of so many members, of different ranks, and at a time when he, who is now their head, was also their king in a true sense, that the said body should not be governed, after the manner of the ordinary compounded bodies, which contain neither so many free states, nor so many that are unequal in extent and power. For, considering how languid and slow such bodies are in their motion, how would it have been possible, that the vast *Germanic Body* should have had union and activity, if a chief had not been placed at the head of it, vested with all the authority necessary to give it life, to make each member act agreeable to the resolutions formed by the laws that concern the general welfare, and to direct their common forces to this point? It seemed therefore sufficient for the states of the empire, that they took the necessary precautions for the free government of their own dominions and territories; and that they hindered the authority with which the head must necessarily be vested, from aiming at a power incompatible with the sovereignty of the members, and from causing affairs to relapse into their primitive state.

X. It must nevertheless be confessed, that, whatever precautions were taken for that end,  
it



it was impossible to hinder conflicts every now and then, about the prerogatives of the emperors, in the government of the empire, and the sovereignty of each of it's members, in his respective dominions. Nothing however can hinder there being a good harmony between those different rights, if both sides would but adhere to what the laws of the empire have so wisely regulated in this point, that the emperor, as well as the states of the empire, would find their advantage in strictly observing them; as I shall shew more at large in the conclusion of this work.

XI. But before we enter into the examination of every prerogative of the emperor, in the government of the *Germanic Body*, in which I shall endeavour, as well as I can, not only to lay open their origin and scope, but also their inconveniences, and the ill use which some emperors have made of those prerogatives; before I say, we proceed so far, and before we point out every instance, at the same time, how the territorial superiority, or, which I take to be the very same thing, the sovereignty of the states of the empire, may be compatible with the pre-eminence and prerogatives of the emperor, I shall first treat in the following chapters, of the manner how he is advanced to that dignity, and

*The GOVERNMENT of the*  
of the qualifications to which regard ought  
necessarily to be had in his election.

---

#### C H A P. IV.

*Of the origin and number of the electors, who  
now have the right of chusing the emperor.*

I. **T**HE kingdom of *Germany* was from first to last elective; the subjects of it, being very jealous of their liberty, gloried in their right to chuse their own kings, and looked on it, not without reason, as the most certain means to hinder the power of their sovereigns from becoming arbitrary. It is true, they did not desire to take the crown away from a family, so long as it had princes left in it worthy to wear it; but it only passed from father to son, by a free election, declared as usual, during the life of the prince who was on the throne, and always renewed and confirmed after his death.

II. This election depended in the primitive times, not only on those who exercised offices on the part of the state, at court, or in the provinces, but also on the nobility of the country. In later times, the deputies of the imperial towns also concurred in it, and both the one and the other repaired to the dyet of the election on the day appointed. Indeed,  
the

the great men of the empire held previous consultations among one another, concerning the competitors to the crown; but they had great regard, in their choice, to the desire of the principal men that assembled with them at the dyet, and did not proclaim the new king without their approbation.

III. Among those great men of the kingdom, the high officers of the crown were particularly distinguished, such as the high-chancellor, the grand marshal, the high chamberlain, the great cup-bearer, and the high-steward; these never failed to be at the said dyets, either because the presence of such as exercised those offices was necessary for the security and regularity of so numerous an assembly; or that they might be at hand to honour the new king at his coronation, by performing some of the functions of their offices about his person.

IV. I shall not stand to explain the nature and extent of those offices, not only because they are no where properly defined; but also because, those of the high chancellor and grand marshal excepted, of which I reserve the account to that part where it will be necessary to mention them, the others consist only in some functions of mere ceremony, which those, who are vested therewith, perform



form at the emperor's coronation. I will only observe here, that these great offices became insensibly hereditary.

V. Therefore, as these great officers of the crown had, by their offices, the greatest influence in the election of the emperors; and, as they did not fail to give their regular attendance for that end, while the troubles in *Germany*, in the reign of *Frederic II*, prevented most of the other members of the empire from repairing to those elections, it happened that the choice of *Henry*, landgrave of *Thuringia*, *William*, count of *Holland*; and especially, the election of *Richard*, duke of *Cornwall*, and *Alphonso*, king of *Castile*, depended almost solely on the will of those great officers.

Spener's  
Droit.  
Pub. II. 4.

VI. Pope *Gregory X*, wrote to those princes alone, to exhort them to put an end to a long interregnum, by the election of a new head. They had, so early as that time, the title of *princes who had the right of election*, or *electoral princes*; and the said pope gave them this title in his briefs.

VII. The election which the princes, I am speaking of, then made of *Rodolph* of *Habsbourg* meeting with no opposition in the empire, they thought themselves authorised to

to make the future elections in the same manner, without the concurrence of the other princes: if any of the latter repaired some time after to the place of election, it was not to give their suffrages, but only to recommend the person for whom they were interested.

VIII. Several elections had already been made in this manner, when the broils of the popes with *Lewis of Bavaria*, whose title of emperor they disputed, induced the electors to conclude a league among themselves, commonly called the *Electoral Union*, by which they reciprocally engaged themselves to defend their right of election against the incroachments of the Holy See. The said emperor readily supported this measure; and a constitution was made in the dyet of *Frankfort*, which imports in express terms, 'That the dignity and power of the emperors only depend on God; that by law, and by custom that had been long approved, the person who was chose by the electors for emperor or king, either by unanimous consent, or by majority of voices, ought instantly to be considered, by virtue of such election only, as true king and emperor; and that all the subjects of the empire ought to obey him; and finally, that he has no need

1337.

Corps  
Dipl. tom.  
i. p. 2. p.  
168.

‘need of the approbation and confirmation  
‘of the pope, or the apostolic see.’

A. B. tit.  
20, 25.

IX. After this regulation, there remained nothing more for preventing all manner of division in the choice of the emperor, than to remedy one inconvenience which happened at the election of *Lewis of Bavaria*, wherein there arose a dispute concerning the exercise of the right which I am speaking of, between the several branches of one and the same electoral family. This difference was determined in the reign of the emperor *Charles IV.* by the famous constitution, called the **GOLDEN BULL**,\* which expressly says, ‘That the electoral territories, viz. those to which the right of electing the emperor, and the great offices of the empire are annexed, ought to remain for ever indivisible; that the right of primogeniture ought to take place, and that none but the person who is lawful possessor of those electoral territories can be reputed an elector, or enjoy the right of suffrage.’ It also regulated in what manner the then seven electors, viz. the archbishop of *Mentz*, as great chancellor of the

\* It had this name, because of the golden seal affixed to the originals of it that were drawn up for each elector, for the chancery of the empire, and for the city of *Frankfort*, as the place of the election.



the *German* empire; the elector of *Cologne*, as great chancellor of the empire in *Italy*; the elector of *Triers*, as great chancellor of the empire in *Gaul* and the kingdom of *Arles*; the king of *Bohemia* as great cup-bearer; the count palatine as high steward; the duke of *Saxony* as grand marshal, and the margrave of *Brandenburg*, as great chamberlain, were to proceed to the election of the emperor. We shall relate the most essential articles of it in the next chapter.

X. *Charles IV*, being king of *Bohemia*, and the principal promoter of the *golden bull*, did not forget to insert in it every thing that might favour that crown; nor did the electors oppose it, because all the rights and prerogatives whereof they were in possession, and of which we shall discourse by and by, were at the same time recognised and confirmed by the said constitution.

XI. It being then the Opinion, that the right of suffrage for the election of an emperor was founded in the great offices of the crown, which nevertheless were only the occasion of it, the duke of *Bavaria*, who had no office at all, was not so much as thought of. The office of great cup-bearer had indeed been exercised formerly by some dukes of that country; but the emperor *Frederic*

I. deprived *Henry the Lion* of that office, when he restored him to the duchy of *Bavaria*, from which his father had been turned out by proscription. As this prince was already vested with the office of grand marshal, by his quality of duke of *Saxony*, the emperor did not think it fitting that one single person should hold two great offices of the crown at one time. He therefore conferred the post of great cup-bearer of the empire on *Ladislaus II. of Bohemia*, much about the time when he also gave him the title of king.

XII. The dukes of *Bavaria* were not sensible of what they lost when the emperor transferred that office to the said king of *Bohemia*, till they saw the advantage it gave to that crown of being a party in the election of the Emperor. Therefore in the reign of *Rodolph of Habsbourg*, when he was embroiled with *Premislas Ottocar*, King of *Bohemia*, for the restitution of the duchy of *Austria*, they laid hold of that opportunity to desire the emperor to restore the dukes of *Bavaria* to the office of great cup-bearer, which had been held by their predecessors. *Rodolph* presently granted them their request; but when he had made his peace with *Wenceslaus*, *Ottocar's* son, by means of a double marriage of one of his daughters and one of

of his sons with that young king and his sister, he revoked his former decree by a second, wherein he confirmed *Wenceslaus* and his successors in the possession of the office of which I am speaking.

1299.

XIII. The dukes of *Bavaria*, being thus deprived of the advantage of concurring in the election of the emperor, by virtue of one of the great offices of the crown, thought that they might at least pretend to share the right of election with the counts *Palatine*, with whom they descended from the same stock, and to whom the office of high steward had procured a place among the electors. This pretension gave rise to broils between *Lewis* of *Bavaria*, before he became emperor, and his brother the count *Palatine*; and, in order to prevent them for the future, the said emperor agreed with his nephews by a treaty, that the right of electing the emperor should be exercised alternately by the chiefs of the two families.

1329.

XIV. It were to be wished for the common good of those families, that the *golden bull* had confirmed this convention, and that the *Palatine* family had not upon this occasion taken advantage of the hatred which *Charles IV.* continued to bear to the children of a father from whom he had snatched the crown.



crown. Several divisions very fatal to the two families would by this means have been prevented, and we should not have seen that of *Bavaria* stopping up the passage of the *Palatine* family to the throne of *Bohemia*, and also concurring to deprive it of the electoral dignity, and part of its dominions, as happened in the reign of the emperor *Ferdinand II.*

1623.

XV. It is very well known that this emperor no sooner deprived the elector *Palatine*, *Frederic V.*, of the electoral dignity, but he conferred it upon *Maximilian*, duke of *Bavaria*, and that the same was confirmed by the treaty of peace at *Osnaburg*. But, as it was not just that the elector *Palatine's* children should suffer by any judgment, whether right or wrong, that had been passed against their father, an eighth electorate was erected in their favour, with this express clause, 'That, if the male descendants of the elector of *Bavaria* should happen to fail, the *Palatine* family should resume that rank in the college of electors which it had before, and that the said eighth electorate should then be suppressed and extinct.'

J. P. O.  
Art. 4.

XVI. There did not seem to be a necessity for erecting a new office for this new elector, because we have already observed that those

those, of which the other electors still bear the titles, ought not to be considered as the basis, but only as the occasion of their right to elect the emperor. This right is moreover sufficiently confirmed now by the written and unwritten laws of the empire, in favour of those who at present exercise it; and, as for the elector palatine in particular, it was enough for him that this right had been assigned to him by a solemn peace, which is of the same class with the fundamental laws of the empire. Nevertheless, the post of *arch-treasurer* was conferred on him afterwards, to the end that he might also have some office to perform at the coronation of the emperor, and that he might no longer contend with the elector of *Bavaria* for the office of high steward, which each of them laid claim to.

XVII. The family of *Brunswic Lunenburg* also made its way to the college of the electors towards the end of the last century, not only by reason of its long standing, and the handsome figure it always made in *Germany*, but also on account of the personal merit of duke *Ernest Augustus*, who was the first of the family that was raised to this new dignity. Indeed this addition to the college of the electors met with very great opposition in that of the princes, for reasons

D

which

1692.

which I shall have occasion to explain hereafter: but as this opposition was not aimed either at the family, or the person of the new elector, who was, on the contrary, acknowledged every way worthy of that advancement, the princes let it drop as soon as the apprehensions were removed which they had conceived from the proceeding of the imperial court, in the management of this affair. *George Lewis*, son to the elector, whom I am speaking of, surmounted all these difficulties, and took his seat at the dyet, in the college of the electors, in 1708. He afterwards sat on the throne of *Great Britain* with so much reputation, that the empire had reason to think itself happy, in having got the start of foreigners, by conferring those honours on that prince, which all *Europe* confessed to be due to him.

XVIII. On the erecting of this ninth electorate, there began to be a mighty stir again at the dyet, in order to find out some great office fit to give to this new elector,; and to this day it is not yet agreed on. He bears the title indeed, of *great*, or *arch-treasurer*, since the proscription of the last elector of *Bavaria*; after which the elector palatine resumed his old place in the electoral college, and the title of *high-steward*. But as matters were reduced to their former state, by the peace



peace of *Baden*, they were as much puzzled as ever; and it is not possible to foresee, how the functions of the elector palatine and the elector of *Hanover*, who, at this time, both claim the title of *arch-treasurer* of the empire, will be adjusted at the coronation of the next emperor.

XIX. At the very time that it was resolved at the dyet to introduce the Elector of *Hanover* into the college of the electors, it was concluded, that it should be free for the emperor *Joseph* to take his place also, in the said college, in quality of king of *Bobemia*. None of it's kings had appeared in the dyet of the empire, since the time of *Ladislavus IV*, who absented himself from it, by reason of his broils with the emperor *Maximilian I*. The relation, which the kings of *Bobemia* stood in with the empire, was indeed so small, after the exemptions and privileges which *Charles IV* had granted them by the *golden bull*, that their presence at the dyet, which they had no right to demand but when it was held in the neighbourhood of *Bobemia*, was disagreeable to the states of the empire. The kings of *Bobemia* found also on their part, that the advantages which might accrue to them from a seat in the dyet, and from the right of assisting in the deliberations concerning all the affairs of the Ger-

*manic Body*, were not to compare with the inconveniences that would result from the subjection under which they should thereby put themselves to the head of the empire: they were therefore very glad to preserve their right of suffrage in the election of the emperor, and took great care that their quality, as vassal of the empire, should be no essential infringement of their sovereignty.

XX. The house of *Austria*, when it came to the crown of *Bohemia*, would probably have persisted in the same system of policy, if the empire had not taken such a turn, since those times, that the sovereignty of the states of the empire, and particularly that of the electors, is now exempt from all ambiguity. The emperor *Joseph*, being convinced of the reality of this change, and reflecting on the advantage he should reap from the prerogative of concurring in all the deliberations of the electors, as well at the general dyet, as at their particular assemblies, took his seat therefore among them with pleasure, as king of *Bohemia*, pursuant to the liberty given him by the states of the empire. By that means he entered also into the views of the catholic party, who wished, that the number of electors of their religion might always be superior to that of the protestants. The catholics pursued these views so far, that  
the

the very admission of the elector of *Hanover* to the electoral college, was accompanied with this clause; "that in case there  
 " were no more catholic successors hereafter,  
 " in the two branches, into which the palatine family was divided; and that the  
 " electoral dignity therein should fall upon  
 " a prince of the *Augsbourg* confession, the  
 " catholic electors should have a supernumerary vote in the college of electors."

---

## C H A P. V.

*Of the election of the emperor, and the capitulation he is obliged to swear to.*

I. **T**HOUGH the golden bull, which prescribes how the electors are to proceed to the choice of an emperor, is now expressly comprised in the number of the fundamental laws of the empire, it will not be insignificant to observe, that, at first, it was not altogether so binding as a law; and that only those articles of it were regarded, which were founded upon ancient custom, and thereby tacitly approved.

II. A distinction is even made at this day, between those parts of the golden bull,



which relate to the electors in particular, and those which concern the whole empire, when it comes to be examined, whether this constitution is liable to any alteration; or rather, if it be necessary to require the consent of all the states of the empire, in cases that may demand a deviation from it. It is commonly believed, that the articles of the first class ought to be left to the single decision of the electors; and the instances which we shall have occasion to mention, of the alterations which they have made of their own head, in things of this nature, favour that opinion.

III. But it was natural, that several articles of the *golden bull* should be annulled by the change of circumstances, which it supposes in the tenor of it; because it is the same case, with regard to all laws in general: I thought it necessary just to make these remarks, in order to give light to what I have to say in the present chapter.

IV. It is a right of the elector of *Mentz*, founded on the *golden bull*, on his office of great chancellor of the empire, and on particular treaties between the electors, to summon his colleagues, for the election of the emperor. He is obliged to do this within the space of one month, computed from the day that he

he has notice of the emperor's death; and to give three months for the day of election, from that of his summons. This summons is now made by private letters, which the said elector sends to each of his colleagues, by a gentleman of his court.

V. The elector of *Mentz* is not left at his liberty to abridge or prolong that term, by his own authority; but there is no doubt, the electors in a body may settle that matter, when circumstances require it. The empire having left to them the right of electing an emperor, it is to be supposed, that what concerns the time of the election, is likewise left to their discretion; and it would have no reason to complain of their conduct, unless their delay had a tendency, which was manifestly contrary to the common welfare of the *Germanic Body*.

VI. As the right of the elector of *Mentz* to summon his colleagues, is principally founded on his office of great chancellor, the chapter of *Mentz* can no more exercise that right, in case of the vacancy of the said see, than any other prerogatives that are annexed to the persons of the archbishops. But it will always be thought better to let the chapter have time to fill the vacant see, than to give rise to disputes in the college of the electors,

concerning the right of the said summons, which several of them think is their due, on the failure of the elector of *Mentx*.

A B.  
sect. 21.

VII. If nevertheless there be reason to apprehend that this method would be too tedious, it seems, that nothing ought to hinder the electors from assembling, for the choice of an emperor, *of their own motion, and without being called*; because the golden bull exhorts them to take this measure, *by virtue of their fidelity which they owe to the holy empire*, if the elector of *Mentx* neglected, or was dilatory in sending the said summons. This rule would also take place, if the elector of *Mentx* omitted the invitation of any one of the other electors.

VIII. It is not necessary that an elector should repair to the place of election in person. All that he need to do is, to send an ambassador in his stead, duly authorized by a full power, sealed with his master's great seal. It is very rare now for an elector to attend himself upon this occasion; they commonly send two or three ambassadors, with equal powers; and as they are careful in the choice of the person who is to represent them particularly in the functions of the ceremony, that he be a man of the first rank; so they take care too, that each of the three,

or



or one of them at least, be well versed in the affairs of state, and in the constitutions of the empire.

IX. An elector who has been legally invited, and does not repair to the place of election, either in person, or by his ambassadors; or who retires, without necessity, before it is finished, loses his vote for the present election: and if he comes too late, he is admitted to the election, in the state it happens to be in at the time of his arrival. An elector might formerly give his proxy to one of his colleagues; but the *golden bull* abolished this practice. It is, in short, for the good of the empire, that the election of an emperor should only be made at an electoral dyet, where there may be reciprocal lights communicated, and intrigues the better prevented.

AB. tit. 1.  
sect. 23.

AB. tit. 12.  
sect. 7.

X. The place appointed by the *golden bull*, for the election of an emperor, is the city of *Frankfort on the Mein*; yet this does not hinder, but the electors may assemble elsewhere, if circumstances require it, as is sometimes the case; if so, a declaration is given to the said city, that the present alteration shall not prejudice the right which is granted to it, or confirmed by the *golden bull*.

XI. The

Tit. i.  
sect. 24,  
25.

XI. The said constitution requires the magistrates and burghers of *Francfort*, on pain of being deprived of all their rights, and even on pain of being put under the ban of the empire, to engage themselves by oath, to maintain the electors or their ambassadors, and their retinues, in security; not to suffer any foreigner, of what condition soever he be, to enter their city, during the time of the election; and also to send out those, who came thither before the arrival of the electors. It is plain, that this prohibition is of very great importance to the freedom of the election: and therefore, this was what they did not fail to urge, against the ambassadors of *France* and *Spain*, and against the pope's nuncio, at the time of the election of *Charles V.*

*Sleidan*,  
Lib. i.

XII. It is true, that, since that time, the said prohibition has not always been so nicely attended to, as well out of regard to the city of *Francfort*, which is a great gainer by the concourse of foreigners that never fail to be there at that time, as for other particular reasons. But these instances cannot be looked upon as a tacit abolition of the article of the *golden bull*, of which I am speaking; not only, because it was by an express grant of the electors, that, in some cases, the public

public ministers and other foreigners were allowed to remain in the city; but also because, when they gave those permits, they at the same time positively declared, that they ought not to be drawn into consequence; and that they reserved to themselves the right of putting the order of the *golden bull* in execution, in all cases, where the circumstances should require it.

Ludew.  
ad A. B.  
d. t.

XIII. Part of the time which the electors employ in the election, is taken up in drawing the capitulation which is usually prescribed to the new emperor. By this, I mean the articles he is obliged to swear to, which are to be, as it were, the basis of his government in the empire; and at the same time, the rampart of the *Germanic* liberty.

XIV. I may here be allowed to make a digression, in order to take notice of the disputes which the electors have had with the princes on this subject; and to trace these capitulations to their origin. Heretofore they contented themselves with the emperor's promise upon oath, that he would make good use of his *charge*. For it was in this light that the states of the empire were pleased to look on the imperial dignity; and this is the name that is constantly given to it, in the style of the dyets.

XV. As



XV. As the princes of the empire took the emperors out of their own body, they did not doubt but they perfectly knew what the laws written or unwritten, and the very nature of the government of the empire permitted or prohibited them to do. If, upon certain occasions, they were obliged to stipulate any thing in particular, with some emperor, they did not think it necessary to reduce it to writing, depending more upon the sacredness of his promise, than upon the most authentic contract.

XVI. But when *Charles V* was advanced to the imperial throne, the electors thought, for several good reasons, that it was necessary to set before his eyes the principal things which merited his care in the government of *Germany*. This prince, though the grandson of the emperor *Maximilian I*, was born in the *Netherlands*, where he had received an education that did not make him much acquainted with the constitutions and customs of *Germany*. It was foreseen, that foreigners would bear sway in his councils; and it was apprehended, that those ministers would endeavour rather to fortify him in the mistaken notions he might entertain of the government of the empire, than to undeceive him. It was said likewise, that the power  
of

of this prince was so formidable, that it might tempt him to support his enterprizes by force.

XVII. The experience of his reign having convinced the electors, that those fears were not groundless, they thought fit to keep up the use of the capitulations; to the end, that the succeeding emperors might not imagine, that they had a more extensive power than their predecessors; and likewise, that they might have frequent opportunities to redress, at the entrance of a new reign, the errors and abuses of the former.

XVIII. While these capitulations only contained such things as were manifestly conformable to express constitutions; or such, as, being founded upon custom, had acquired the force of law; the electors met with no opposition in the right which they appropriated to themselves, to compose those capitulations of their own head. But when the other princes imagined they saw that the liberty which they left the electors, in this respect, furnished them with a fair opportunity to augment their prerogatives in the government of the empire; and to distinguish themselves more and more, from the other members of this body; they began to murmur at it, and to seek for some remedies to  
this

this abuse. But their complaints were not uttered, until the congress of the peace at *Ofnabrug*, where, by the assistance of *Sweden*, they endeavoured to obtain, that the electors might no longer compose the capitulation without their advice.

XIX. They found this crown the more favourable to their demand, because it already looked upon itself, as a member of the college of princes, with regard to the provinces which the empire yielded to it, with right of session and suffrage at the dyet. On the contrary, the imperial court supported the cause of the electors, for fear, lest the authority of the emperors should be still more cramped, if the princes and towns had a share in the capitulation. As it would have been too difficult to decide this matter in a congress, it was concluded, that it should be treated of at the next dyet; wherein they would consider of the drawing up some capitulation, the articles of which might be constant and invariable.

XX. This affair was indeed maturely examined in the dyet, and so well managed, that the electors agreed, at last, with the princes, and other states of the empire, on a draught of perpetual capitulation. But this draught has not yet obtained the sanction necessary



cessary to turn it into a law, because of the reluctance of the princes to grant the electors full liberty of adding any thing to the said draught; or, of leaving out any of the articles, according as occurrences might require the alteration, which it is impossible to foresee.

XXI. While this matter was debated at the dyet, and before the draught was reduced to the terms in which it stands at present, the princes were fain to content themselves with presenting to the electors, at every election, some articles which they would be glad to have inserted in the capitulation. The electors did not fail to give heed to this; but, as they always left some of those articles in arrear, the princes thought themselves obliged to protest against the late capitulations; not only by reason of the articles omitted, but because of others which they did not like.

XXII. The capitulation, made with the emperor *Charles VI*, met also with the same opposition, on the part of the princes; tho' it deviates but very little from the draught I have been speaking of. These were the two principal articles of their last complaints: They think that the electors have derogated from the right of the other states, by decreeing,

ing, that, in some cases, the consent of the electors may be sufficient, for authorizing the emperor to declare war, or to conclude an alliance, in the name of the empire. It is very true, say the princes, that, at the time when the dyet continued only some months, cases might have occurred, wherein it would have been dangerous for the emperor to wait for the consent of all the states, for a war, or for an alliance : but what was reasonable to be permitted, at that time, ought no longer to have place at this day, when all the states of the empire are constantly assembled at the dyet, and wherein nothing hinders the emperor from consulting them at all times.

XXIII. Another article which the princes represent as a great grievance, in their protest against the last capitulation, consists in the electors stipulation with the emperor: *That their ambassadors should have the precedence of the princes in person, without distinction.* It is not surprizing that this clause should disgust the princes of the ancient families, of whom several are descended from the same stock as the lay electors, and are every day making alliances with royal and electoral families. But may it not be presumed, that the article I am speaking of, has not a view to those princes, but to those only, who were lately promoted to the dignity of

of princes ; and of whom there are always some in the emperor's service. Indeed, it seems as if the ambassadors of the electors could have disputes about rank with none but those who often assist at the ceremonies of the imperial court, by virtue of their offices. And as the ambassadors of the electors ought to enjoy the same right, and the same honours, that are granted to crowned heads, it would not perhaps be such an irregularity, that they should have the precedence of a prince, who upon such an occasion should be in the exercise of his office at the court of the emperor.

XXIV. The princes that are now reigning, of the ancient families of the empire, can scarce be in the same case ; but if the princes, who are the cadets of those families, had the like employ, they would have it to say, that the ambassadors of the electors demand the precedence, not by considering them as princes of the empire, but as officers and ministers of the emperor, or some other sovereign.

XXV. I return to the ceremonial of the election. When the electors have finished their preliminary conferences about the candidates for the imperial crown, and what is proper to be stipulated with them in the capitulation,



pitulation, the elector of *Mentz* fixes the day for the actual election, and notifies it to his colleagues. On that day the gates of the city are kept shut, and the elector of *Mentz* keeps the keys. The electors repair from the town-house to the church, with a pomp suitable to their dignity; being encompassed with their guards, and the great marshals of their courts bearing the sword before them in the scabbard. The ambassadors of the absent electors content themselves with the splendor of a rich retinue. They also give the precedence to the electors, who are present in person; even though their master is of a superior rank in the electoral college.

XXVI. After having heard mass at church, during which only the protestants are absent; or at least, just before the elevation of the host, they all approach the altar, there to take the solemn oath prescribed by the *golden bull*. This oath engages them, by the faith which binds them to God and the holy empire, to chuse for emperor, without cabaling, or any view to particular interest, &c. him, who according to the best of their knowledge shall appear to them fit *idoneus* for this dignity. As the religion of the protestants does not permit them to use the intire form of the said oath, which says, *So help me God, and all his saints*; the catholics also wave it, for

A. B. tit.  
2. sect. 3.

for avoiding confusion; so that now, both make use of this phrase, *So help me God, and his holy gospel.*

XXVII. The electors, after having taken this oath, retire to what they call the *conclave*; which is the sacristy, or (as we call it) vestry-room of the church, there to proceed actually to the election. Those of the electors ambassadors, who do not represent their masters at this ceremony, and some gentlemen of their retinue, may enter the conclave at the same time. Two of the imperial notaries are also called in, that they may be witnesses of a two-fold declaration, which the elector of *Mentz* demands of his colleagues, and of the ministers of the absent electors, before they proceed to the vote. He demands, in the first place, if any one of them knows of any lawful impediment why the election shall not now be made; after which, he makes them promise, as it were, upon oath, that they will, in this election, have regard to the majority of the suffrages, pursuant to the tenor of the *golden bull*, and to ancient custom. After they have all explained themselves on this point, in a satisfactory manner, the witnesses are dismissed, with a charge to the two notaries, to make a record of the declaration which they have heard.

XXVIII. Then the elector of *Mentz* collects the suffrages of the other electors, which each of them delivers with an audible voice, according to his rank ; but the distinction of preference between the electors that are personally present, and the ambassadors of those who are absent, is then dropped. The elector of *Mentz* gives his vote last. The election is determined by the majority of the voices of the whole body of the electors ; I say, by the majority of the voices of the whole body : for, if of three competitors, for example, one had four voices, another three, and the third two, neither of the three would have the number of voices that he must have, to be lawfully elected. Any elector, who has suffrages for himself, may thereto join his own suffrage, to make the majority.

A B. Tit.  
xi. sect. 10.

XXIX. The election being thus finished, they who were witnesses at the beginning of this transaction are called in, when the elector of *Mentz* declares to them, who is the person elected ; but he is not proclaimed till after he has sworn, himself, if he is present, or his ambassador for him, to observe all the articles of the capitulation.

XXX. It



XXX. It was proposed, at the election of the emperor *Leopold*, to insert in his capitulation a *commissorial clause*, that is to say, a clause importing, "That the emperor should " (*de facto*) be degraded from his dignity, " if he infringed any of the articles of that " capitulation." But, this prince having declared in plain terms, that he would not accept the imperial crown, upon a condition so injurious, the proposition was dropped. And indeed, it may be said, that such a clause had a greater tendency to kindle a civil war in the empire, than to defend its rights and freedom against unjust incroachments.

---

## C H A P. VI.

*Of the qualifications required in the person proposed for the imperial dignity.*

I. **I** Observed just now in the preceding chapter, that the regulations of the *golden bull* were for the most part ancient customs of the empire, to which it had been thought proper to give the force of a written law. This being the case, it is not to be wondered at, that this constitution, when it mentions the qualifications that a person

## The GOVERNMENT of the

Golden  
bull, 11. 1.

ib. sect. 3.

ought to have, who is proposed for advancement to the imperial dignity, only requires, that the electors should chuse for king of the Romans, and the future emperor, *a man who is good, just, and useful*; or, as it is said in the oath which it prescribes to the electors, *a temporal head of the christian people*, who is proper for that dignity. It was not convenient to cramp the electors choice, beyond what the safety of the empire substantially demanded; and the silence of the *golden bull*, as to several qualifications, which at this day would be thought to be requisite, in the person who aspires to the imperial crown, and which are founded upon ancient custom; this silence, I say, plainly proves, that those qualifications were not at that time considered as necessary, and that those customs were not as yet a rule.

Titius  
Spec. Jur.  
Publ. Lib.  
ii. c. 8.

II. Being now to speak of those *observances and usages* of the empire, which form a tacit law, and which are termed in the German language *Reichs Herkommen*, it will not be improper to make some remarks upon them. An able civilian of Germany is of opinion, that, among the fundamental laws of the empire, there are now existing, that can be justly numbered with those that are unwritten, and be regarded as founded merely on a tacit approbation; because the customs,

to

to which such force is proposed to be given, turn either upon dubious cases, or upon cases contained, at this very hour, in the laws that are written; or upon cases founded upon some reason of state. For my part, I am not of this opinion. It is true, however, that it is but too natural to regard as a law, what has been freely practised upon several occasions; and that we often forget, that it is not length of time which gives the force of law to repeated acts, but the tacit will only of those who are capable of forming it into a rule. But, in order to be very sure of such a consent, with regard to the affairs of the empire, it ought to be proved me-thinks, that, by reason of some disputes which have risen about those customs, one of the parties has asserted them for a tacit law; and the other, though at first not agreeing to it, did for that reason acquiesce in it.

III. We shall now consider some of those qualifications, which it is pretended an emperor ought to have, and the strength of the arguments that are urged, to prove them to be necessary in the person who aspires to this honour. It is in the first place looked upon, as a usage which has passed into a law, *that the emperor be originally a German*. They, who maintain this opinion, have the examples of all times on their side, if we except the trou-



blesome times in the empire, after the death of *Frederic II*, which at last produced a long interregnum. For it may readily be granted them, that the election of *Richard* duke of *Cornwal*, and of *Alphonso* of *Castile*, ought not to be put into the account; considering especially, that the former only shewed himself in *Germany*; that the latter did not set a foot in it; and that both had but a certain number of adherents.

IV. But there are other examples, which may be produced with more reason, to prove the contrary opinion; as when the king of *France*, *Philip the fair*, endeavoured to procure the imperial crown for his brother, after the death of *Albert I*; which the pope traversed, by pressing the electors to hasten to fill the throne of the empire, before *France* was in a condition to act. Another pope took pains, on the contrary side, to persuade the electors to take the crown from the head of the emperor *Lewis* of *Bavaria*, and place it on that of *Charles IV*, king of *France*. In both these cases, the quality of a foreigner was not deemed any bar to the imperial dignity; and the electors, who were on the point of a second compliance with the advice of the holy father, who was a sworn enemy to the emperor *Lewis*, did not think, that a law, founded upon ancient customs,

toms, hindered them from electing a prince, who was not their countryman. The pope's solicitations might indeed, upon this occasion, make them forget their true interest; but, however, if there was a fundamental law that deprived them of the liberty of electing a foreigner, they could not be ignorant of it. From hence I conclude, there was no such law in being; and that the electors thought themselves free, in this respect, to make the choice they intended.

V. It will be urged again, "This law Sleidan de Stat. Rel. was plainly acknowledged afterwards, and the historian *Sleidan* assures us it was, where he relates the speech of the elector of *Mentz* to his colleagues, at the time that *Francis I* and *Charles V* were competitors for the imperial crown. For, among the arguments he made use of in this speech against the king of *France*, it is expressly said, *that laws of the empire, and the oath of the electors*, did not permit them to elect a foreigner." But, as such a law was no where in writing, the elector could only appeal to ancient custom, as to a tacit law.

But is not this speech, which *Sleidan* fathers upon the elector, one of that class with which historians love to embellish their narration? After all, supposing that the elector  
of

of *Mentz* really made use of this argument, is it not well known, that an orator drops expressions sometimes at a venture, when he thinks they may answer his point in view, which he would be puzzled to justify, upon a nicer discussion

*Pfeffing*  
vit. illust.  
Lib. i. tit.  
5. sect. 3.

VI. An author, very well versed in the public law of the empire, was of opinion, that the prohibition of electing a foreigner, of which mention is made in the speech said to be made by the elector of *Mentz*, was in the oath itself prescribed by the *golden bull*. But I think the proof he gives of it very weak, by presuming at a venture, that the ability to govern the empire well, to which it is said, regard ought to be had in the choice of an emperor, could not possibly be found in a prince, who was quite a stranger to *Germany* and its constitutions. Indeed, it will be allowed this author, that in ordinary cases a *German* prince must be more proper than a foreigner, to be the head of the *Germanic Body*; and that this is the reason why, hitherto, natives have been preferred before strangers. But it does not therefore follow, that a foreigner may in no case be preferable to natives; nor that the electors are prohibited to attend in their choice to such extraordinary cases, and then to determine it in such a manner, as may be most suitable to the good of the empire.

VII. After



VII. After all it cannot be said, that the reason said to be used by the elector of *Mentz*, whether true or false, determined his colleagues to enter into his opinion; nor that they thereby acknowledged that the custom, to which he appealed, ought to serve for a rule. For it is a thing very well known, that it was by no means his quality of foreigner, that hindered the king of *France* from carrying his point; but that other reasons, arising from the then conjuncture of affairs, and the state of the *Germanic Body*, determined the election in favour of his competitor.

VIII. A second question which I think deserves to be considered, and which turns also upon an external qualification of the person proposed for the imperial dignity, is to know, *Whether a woman may attain to that dignity?* If we were to make what has been hitherto observed a rule, it must needs be said, that women have much less pretensions to it than a foreigner; because the history of the empire does not furnish one single instance of a woman that was elected empress, and governed the empire in her own name. But what I just now said, as to the stress that ought to be laid on mere customs, may be sufficient to prove, that, even in this respect, the electors are at their intire liberty.

IX. To

Spener

J. P. Lib.

vi. c. 11.

p. 207.

Schilter

J. P. Lib.

i. lit. 16.

sect. 2.

Lehman

Chron.

Spir. lib.

ii. c. 11.

Schilt. d.1.

IX. To this may be added, that, among the ancient customs of *Germany*, there are several facts, which a princess, that was ambitious of the throne of the empire, might alledge in her favour; as that several of the emperor's wives have been crowned at *Rome*; that they have been called, in the public acts, *associates and conjuncts in the empire*, *confortes imperii*: That they were charged with the custody and management of the private treasure of the emperors; that they had a sort of chancery, and their great chancellors;\* that they shared several offices of the palace with the great chamberlain; that they sometimes presided in the emperor's stead, at the pleadings of public causes. — But nothing would be a better argument for them, than the glory with which several empresses have governed the empire; some in their husband's absence, as *Adelaide*, wife of *Otho the great*; others, during the minority of their sons, among whom, *Agnes*, wife of *Henry III*, and mother of *Henry IV*, deserves the first rank: and some finally, during the vacancy of the throne, as *Cunigonde*, widow of *Henry II*. I know well, that these examples are no proof in themselves, that an empress may be elected in the place of an emperor; because

\* The abbot of *Fulda*, even at this day, bears the title of great chancellor of the empire.

because the *French*, whose crown never falls to the distaff, boast also of princesses, that have gloriously held the reins of government upon the like occasions. But this, at least, shews the ridiculous notion of such as say, that the *Germans* always had an aversion to government by women.

X. Would the *Salic* law therefore exclude women from the imperial throne, as it does from that of *France*? There are indeed authors, who pretend it ought; because this law was made by the *Franks*, who were a people of *Germany*; and because it existed, in all probability, before that nation passed the *Rhine*. But they will be of another opinion, who give but ever so little attention to the article of the *Salic* law, upon which the *French* formerly grounded the exclusion of women, and to the juncture of time, when they had recourse to it. The point then in view was, to exclude from the throne of *France* *Edward III*, king of *England*, who was the next successor to *Charles IV*; and they rather chose to keep him out by a law, that was little, if at all applicable to the case before them, than to exclude him openly by state policy; though this was the real motive that determined the *French*, who dreaded the government of a foreign king, and of a union of their crown with that of *England*. Besides,

*Struv.*  
Corp.  
Hist. Ger.  
iii. 16.



Besides, it must be granted, that there is a difference betwixt an hereditary kingdom, and an empire where the crown is bestowed by election.

XI. But this very plea, say they, that the imperial dignity is conferred by election, is another proof, that the sex cannot be competitors for it. For in what elective kingdom was it ever known, that a woman was placed upon the throne, by a deliberate choice? I confess, that this has been seldom the case, but there are some instances of it. Not to go so far back as queen *Margaret*, who wore the three northern crowns; I will only mention the princess *Hedwiga*, whom the *Poles* placed upon the throne, out of pure veneration to the memory of the great *Piasle*, whose descendants had given them dukes and kings for near five hundred years successively; and of whose family she was the only sprig.

XII. These general considerations may in some conjunctures be enforced, by reasons of a superior nature; as, for example, if the election of a woman should be the means of preserving the imperial dignity, in a family, capable by it's own power, to sustain that dignity, and to hold the balance of *Europe*.

The election of the emperor *Leopold* met with a great many difficulties, from the efforts of those who were jealous of the power of the house of *Austria*; but, all things duly considered, the electors were sensible, that the choice of that prince was most conducive to the good of the empire; and that the election of any other would be attended with great inconveniencies. For this family would have very little dependance on the empire, and might easily break off from it, if it were once inclined to make use of the prerogatives that had been granted it by very antient titles; which would not only be a great breach in the *Germanic Body*, but might also serve as an example to other princes of the empire, who are strong enough to defend their own dominions; the consequence of which would in short be a total dissolution of this body, and the ruin of such of it's members, as are only supported by the present constitution. I submit the consideration of these arguments to those who are competent judges of their force, and only draw this inference from it for my thesis; that considerations of so much importance must have infinitely more weight in the balance of sound policy, than all the arguments that are made use of, to prove that women are incapable of governing the empire.

*Monzamb.  
de Stat.  
Imp. cap.  
2. sect. 4.*

*Puffend.*  
de Rebus.  
Brand. lib.  
vii. § 27.

XIII. The inclination that some electors shewed, at the time which I have been speaking of, to transfer the imperial dignity to the family of another prince of *Germany*, gave occasion also to canvass the question, *Whether it be necessary that an emperor should be powerful in himself?* Some there were of opinion, That, if regard be had solely to the internal good of the empire, a prince of but a moderate share of power was to be preferred to another who could support himself without any other auxiliary: That the former would enterprize nothing against the liberty of the *Germanic Body*, and could form none of those ambitious designs which tend to embroil the empire with foreign powers, and consequently involve it in hazardous wars: That he would be, on the contrary, obliged to cultivate the affection of all the states of the empire: That, being perfectly united with them, and directing all his views only to the common good, he would always find them disposed to support him in the just exercise of his authority at home, and in the defence of the majesty of the empire abroad. Others were of opinion, That a prince, who was not powerful enough of himself, would become contemptible at home and to his neighbours: That the ambition of aggrandising himself would so engross his heart,



heart, that it was to be feared that, in order to carry his point, he would have recourse to enterprizes both unjust and dangerous. There are instances in favour of these two different reflections. It is the concern of the electors maturely to consider what, according to the various circumstances, may be most conducive to the particular advantage of the empire, or the general benefit of *Europe*.

XIV. The nature of the oath which the electors take, according to the form of it prescribed by the *golden bull*, has inclined some to think that it excluded the ecclesiastical princes from the imperial throne, because this oath imports, That the electors ought to chuse a *temporal head* of the christian world. But as there are not wanting examples of ecclesiastical princes who have quitted that habit, in order to marry and get heirs to a family on the point of being extinct; so nothing could hinder them from abandoning the ecclesiastical state for the imperial throne, provided they had other reasons for it, as would be, for instance, a marriage with a princess possessed of great dominions. In the *golden bull* the emperor is stiled the *temporal head of the christian world*, in allusion to the opinion which prevailed heretofore, as I have already observed, That all the christian powers formed but one sole re-

public, of which the pope was the *spiritual*, and the emperor the *temporal head*. It is one thing therefore to say, that this temporal head is an ecclesiastic, and another to say, that an ecclesiastical prince becomes the temporal head after having renounced his former state.

XV. It is not surprizing that the catholic doctors think it also a necessary requisite in an emperor to profess the *Romish* religion. But the arguments on which they found this demand are so weak, that it is easy to confute them: 'The emperor, *say they*, is 'made to promise at his coronation to keep 'the holy catholic, and apostolic faith, and 'to pay due obedience to the holy father, 'the pope, and the holy *Roman* church. 'Can a protestant prince enter into such engagements as these?

In order to answer this objection, which is more specious than it is solid, I will not say with some authors, 'That the protestants also profess the catholic and apostolic 'faith,' because, it is clear that in the promise which is here required of the emperor to keep this faith, the expression is taken in a sense very different from that put upon it by the protestants. I own, on the contrary, that it is very true that the ritual, which is

made use of at the emperor's coronation, is altogether adapted to a person supposed to be of the church of *Rome*: But shall it be inferred from thence that no person, to whom that ritual is not applicable, can be vested with the imperial dignity? We have already observed that, for the sake of the protestant electors, there was a necessity of altering what the *golden bull* prescribes to the electors in general, relating to the mass, and to the oath preceding the election. It would be natural therefore to suppose that the ritual of the coronation might as well be altered for the sake of an emperor of the protestant religion; and this is a method which has been observed in all kingdoms that have abandoned the church of *Rome* since the Reformation. The *golden bull* could not make any statute upon a case which was not yet known.

XVI. Forasmuch as the title of *emperor of the Romans*, which the head of the *Germanic Body* is authorised to bear, has, from the very origin of it, demonstrated the engagement which those who bear it are under to defend the pope and the Holy See, it cannot be denied that it is necessary for the emperors to oblige themselves to it also, as they expressly do in the oath which they take at the coronation, and in the first article of the capitulation, which they must



Cap. of  
Char. VI.  
sect. i.

also swear. But this is no proof that, in order to acquit themselves of such engagements, the emperor must absolutely be of the *Romish* religion: "For, in the same manner " as a catholic emperor promises to *protect* " the electors of the *Augsbourg* confession, and " those who are of their religion," an emperor of this confession may also promise to protect the pope, and those who profess the *Romish* religion. This protection requires nothing more than that the emperor should maintain those to whom he promises it in those rights and privileges whereof they are in possession.

XVII. The protestants, it is true, have experienced very often, to their cost, that the principles of the *Romish* religion hinder the best of emperors from punctually performing their engagements to them. But it is not imagined, that the *Roman* catholics can find any thing in the religion of the protestants, to give cause of apprehension that any emperor of that religion should fail in his oath to protect the church of *Rome* and its members.

XVIII. As there is nothing in the emperor's engagements, to hinder a protestant prince from attaining to that dignity, and as, moreover, the opinion which I declare against is

is not supported by any constitution of the empire, it may be said that the protestants, on the contrary, may alledge in their favour the fifth article of the treaty of *Osnabourg*, which says in exprefs terms, “ That, saving  
 “ the articles agreed on in the treaty of  
 “ religion, and in that of *Osnabourg*, there  
 “ ought to be for all things *an exact and re-*  
 “ *ciprocal equality* between all the electors,  
 “ princes, and states of both religions, as far  
 “ as is *agreeable with the form of the repub-*  
 “ *lic*, with the constitutions of the empire,  
 “ and with the present convention;” so that  
*what is just for one party* is the same for the other. What could be more opposite to this equality of rights, which the said article requires may be observed by the two parties, than the exclusion of protestants from the throne of the empire?

XIX. Nor is there any thing in the present form of the government of the empire, which hinders the equality from taking place in this respect between the catholics and protestants, unless that the number of the catholic electors so far surpasses that of the protestants, that there is not the least appearance that the majority of votes, which determines the election of the emperor, can happen in favour of a prince of the evangelic religion. But if from the improbability there is, as things stand at

present, that a protestant prince should be elected emperor, it might be inferred that such a prince is by himself not eligible, it would as well be said, contrary to the general opinion, and contrary to the experience of past ages, that a mere count of the empire could not be eligible, because, now that the revenues and domains of the empire, which served heretofore for the maintenance of the emperor, are alienated and dissipated, there is not the least appearance that a count should be adorned with the imperial diadem, who has not the necessary revenues to support the splendor of it. And do not the catholics themselves own tacitly, that there is no defect of right or personal qualification which excludes protestants from this dignity, when we see what precautions they take in order to secure to themselves the perpetual majority of suffrages in the electoral college? As has appeared, especially in what we have already mentioned of the supernumerary voice which has been promised beforehand to the catholic electors in case the *Bavarian* family should be extinct, and that the electoral dignity in the *Palatine* family should fall to a protestant branch.

XX. The laws of the empire determine nothing concerning the *age* of the person proposed to be elected for emperor. It appears



pears that, in the times which preceded the long interregnum, an infant, even one in the cradle, has often been chose for successor to an emperor. It was then a custom not to let the succession go from the reigning family without good reasons, and the father took care, before his death, to have his son acknowledged for his successor. But, since that interregnum, there has not been an emperor that was an infant. We have only seen some that have been elected very young, as the emperor *Leopold*, who was scarce eighteen years of age; and the emperor *Joseph*, who was declared king of the *Romans* when but twelve. The capitulation of the latter imported, "That, if the emperor should happen to die before his appointed successor attained to eighteen years of age, the vicars of the empire should govern in his name till he attained to it."

Art. 47.

XXI. If any should be apt to infer from this settlement made by the electors, to which the princes and states of the empire made no manner of opposition, that the empire, tacitly, owned that an emperor must be at least eighteen years old, is it not rather a more natural consequence to suppose that, with regard to the age of the emperor, the electors are at their liberty to act as they think most suitable to the conjunctures of

the time, provided they take care to act so, as that the empire may not be a sufferer under his minority?

## CHAP. VII.

*Of the coronation of the emperor.*

I. **T**HOUGH the person elected for head of the *Germanic Body* has an indisputable right to the imperial dignity, by virtue of his election; and though the popes themselves have owned, that whoever is emperor of the *Romans*, must be first king of *Germany*; yet it was heretofore the custom, to give the elected head only the title of king of the *Romans*, until he had been crowned at *Rome*. The golden bull alludes to this custom, where it is said, that the electors ought to elect a king of the *Romans* for their future emperor.

Tit.ii. §. 3.

II. This obligation of the emperors to be crowned at *Rome*, before they assumed the title of emperor, was for a while of very great advantage to the popes. The distinction which the imperial crown procured in *Christendom*, to the person that wore it, was the reason that the kings of *Germany* eagerly solicited

solicited it, and came readily into the wishes of the court of *Rome*, in order to attain to that honour without molestation. To which we might add, that the popes also took occasion, from the prerogative of crowning the emperors at *Rome*, to challenge the regard of being the dispensers of the imperial dignity; and to claim a power of depriving such person of it, as did not make use of it to their liking, and did not exert himself for extending the honour and power of the Holy See.

III. But, after the famous *interregnum*, the face of things was changed: The vassals of *Italy* having seized the most considerable of the rights and domains, which the emperors possessed in that country; and the popes having likewise pushed their usurpations upon the emperors and the empire, as far as was possible, neither the one nor the other desired, that the king of the *Romans* should ever pass the *Alps* more; for fear, lest the ancient custom of going with a body of troops to *Rome*, there to be crowned and recognized emperors, should give them an opportunity of reviving the ancient rights of the empire over the vassals of *Italy*, and the popes.

IV. The emperors themselves too had no longer an inclination to concern themselves



The GOVERNMENT of the

selves in the affairs of *Italy*, when they saw, what several of their predecessors had lost by it. And, if, now and then, some emperor still had a mind to run the hazard of a fresh attempt, he was quickly put out of conceit with it, by the little assistance which the states of the empire furnished him with for those expeditions; from a persuasion they were possessed with, that those, who of late years had undertaken them, had only their own particular interests in view.

V. It may be said in fact, that *Charles IV* only went to *Italy*, to make a sale there of the remainder of the emperor's rights; and he was not ashamed to make an engagement with the pope, not to enter *Rome*, until the day fixed for his coronation, and to stay there but one night.

VI. The only emperor that appeared at *Rome*, with any sort of grandeur, since the epocha I have mentioned, was *Frederic III*. I say, with any appearance of grandeur; for the honours, that were paid to him at *Rome*, were not so much a demonstration of the pope's respect for him, as an expedient which the latter employed to rivet that prince to his interest; and to make him subservient to his design of augmenting his own authority in *Germany*.

VII. This

VII. This custom of the kings of the *Romans*, to receive the imperial crown from the hands of the popes, before they assumed the title of emperor, had it's final period with *Maximilian I.* This prince had expressed a great desire, at first, of being crowned at *Rome*; because he apprehended, that *Lewis XII.* king of *France*, who had just seized the *Milanese*, and thought of pushing his conquests in *Italy*, had formed a design to take the title of emperor, and would demand of the pope to confer it upon him: and the court of *Rome*, which likewise began to take umbrage at the success of the *French* arms, did not fail to corroborate *Maximilian* in his suspicions.

VIII. *Maximilian* having therefore imparted his apprehensions to the dyet that was summoned at *Constance*, the states of the empire, there assembled, resolved to put him in a condition to go, with a good body of troops, to *Rome*, there to receive the imperial crown. The *Switzers* declared, at the same time, that they would separate from *France*, and join the empire, in case that the said king offered to disturb him in the possession of a right, which the kings of *Germany* had enjoyed ever since the reign of *Otho the great*.

IX. If

IX. If it be true, that *Lewis XII* had really formed such a plan, these measures quite disconcerted it. But the states of the empire, having nothing now to fear from that quarter, cooled in the resolution they had just taken at the dyet. They signified indeed to the ambassadors of *Venice*, that they took it ill, that their republic should so obstinately refuse a passage, as they did, to the king of the *Romans*, through it's dominions; but they did not second him in the efforts he made, to open his way through them by force of arms.

X. The pope was not sorry that this opposition by the *Venetians* hindered *Maximilian* from coming to *Rome*: and, when he heard that this prince had formed a resolution to get himself proclaimed emperor, without any other formality, he readily concurred in it; and declared by a *bull*, which he sent to him, that he authorised him to take that title; and that he intended he should be deemed as legally crowned, by virtue of that *bull*, as if it had been done by his own hand.

XI. This event gave occasion to the following emperors to assume that title, the moment they were crowned in *Germany*. Indeed, the custom of prescribing to them  
in



in the capitulation, that they should endeavour to be crowned at *Rome*, was kept up for a while ; but the execution of this article was ever after left to their own discretion. And when the electors perceived afterwards, that this article was become unnecessary, by the little inclination which the emperors manifested to comply with it ; they at length omitted it, in the capitulation of the emperor *Leopold*.

XII. This alteration is a plain proof, that the electors thought it needless and superfluous, that the person, whom they chose for head of the empire, should go to *Rome* to be crowned, for the sake of strengthening his title of emperor. But it would be wrong to infer from thence, that they thereby proposed to release the popes from the obligation they were under, of setting the imperial crown on his head, at *Rome*, whenever he demanded it. It may be well imagined, however, considering the times past, and the present situation of affairs, that an emperor, who should wish to be crowned at *Rome* now, would find it a very difficult matter, and, probably, quite miss of his aim, unless he were the master in *Italy*.

XIII. Though, since the *epocha* that I just now mentioned, the electors no longer require

## The GOVERNMENT of the

require of an emperor, that he be crowned at *Rome*; yet they have a demand upon him, as to his coronation in *Germany*. In the capitulation which they oblige the person elected to swear, there is always an article, which imports, "That he shall, in the first place, receive the crown of the king of the *Romans*; (by which they mean that of *Germany*) that he shall do every thing proper for that end; and that he shall invite all the electors to the coronation, there to perform their offices."

Capit. of  
Charles VI  
art. 3.

XIV. By demanding of the emperor, that he shall not delay his coronation in *Germany*, the electors do not mean to have it understood, that the imperial dignity depends on this ceremony; and that an emperor cannot begin to reign until he is crowned: (for there are several instances that prove the contrary.) But as the electors are actually assembled personally, or by their ambassadors, for the choice of the emperor, it would be inconvenient for them, if his coronation, which likewise requires their presence, should be put off.

XV. The city of *Aix la Chapelle* is appointed in the golden bull, for the place of coronation; wherein that constitution does no more than prescribe what had been used  
for

for a long time past. It was at this city, that the emperor *Charlemain* constantly resided, in the latter years of his reign: he delighted in this place, on account of it's mineral waters, which were good for his health. He was so fond of it, that he adorned it with structures, which at that time were reckoned magnificent. Here he had a throne erected, and he chose this city for the place of his interment. From hence it came to pass, that, at the time when the imperial crown was united to that of *Germany*, and when the city of *Aix* made a part of the kingdom of *Germany*, it was made choice of for the coronation of the emperor; with a view of doing him the more honour, by placing him on the very throne of *Charles the great*.

XVI. That was indeed a very proper circumstance in those times, to heighten the dignity of the person, who was inaugurated after that manner; but it was natural on the other hand, upon a closer regard to the reality of things than to circumstances, that the place of the coronation should be determined by the juncture of the times, and by real conveniencies. In conformity to this maxim, it appeared, that there were cities in *Germany* more proper for the coronation of the emperor than *Aix*; and they did not scruple to perform it at the very place of the election,



election, with a principal view to the convenience of the electors, who assist at both ceremonies. All that is done in such a case, in favour of the city of *Aix*, is to give it an authentic declaration, when required by the said city: That the changing the place of the coronation, ought not to be construed to the prejudice of that prerogative which it derives from the *golden bull*.

XVII. The nature of my work does not make it necessary, that I should here enter into the whole detail of the emperor's coronation. It is sufficient for me to take notice of so much of it, as has a relation to the government of the *Germanic Body*, or to the rights of any of it's members. The *golden bull* delegates the function of the coronation, or, rather, the consecration of the emperor to the elector of *Cologne*. This right is vested in him, relative to the ancient custom of celebrating the first coronation of the emperors at *Aix*, which is in that diocese. For this reason, the elector of *Mentz* thought he did not molest the right of his colleague, by claiming the same to himself, when the emperor was crowned in another city; or at least, when that coronation was performed in a city of the diocese of *Mentz*. The archbishop of *Cologne*, after a warm but short dispute, was inclined to yield to the arguments,

ments, that supported the pretension of the see of *Mentz*; and their difference was adjusted upon this condition, that whichever of them was the diocesan of the town, that should be chose for the coronation of the emperor, should perform the office of the consecration; and that, in any other towns, which are neither in the diocese of *Mentz*, nor that of *Cologne*, the two bishops should perform the same alternately. And, to give this convention the more validity, it was afterwards inserted in the capitulation of the emperors. However, all the three spiritual electors lay their hands on the crown, when it is placed on the head of the emperor.

XVIII. Forasmuch as the two cities of *Aix* and *Nuremberg*, are the depositaries of some of the jewels and vestments, with which the emperor is decked at his coronation, as well as of some of the relics made use of at that ceremony, both the towns send them, upon this occasion, by deputies from their bodies, to whom a security is given in writing, that after the coronation the same shall be restored to them. Heretofore the emperors took great care about the custody of these jewels; and he that could obtain the possession of them, after the death of an emperor without issue, thought it gave  
G him

1424.

him a great advantage over his competitor. The emperor *Sigismund* was obliged to send these jewels to *Nuremberg*, in the time of his war against the *Hussites*, as not thinking them safe at his castle of *Carlstein* in *Bobemia*. That city has continued to keep them ever since; and though it has been sometimes disturbed, on account of the possession of those treasures, and the relics, which are a part thereof, they have so well maintained it hitherto, that their right to keep them is not like to be any more disputed.

XIX. We observed above, in speaking of the emperor's capitulation, that nothing more was required of them anciently, than to make them promise at the coronation, that they would maintain the holy religion, that they would exercise justice without respect of persons, and that they would govern the empire in the best manner they could, with the advice and assistance of their faithful vassals; and the oaths which are at this day tendered to the emperor, one before his consecration, and the other after he is consecrated, and invested with all the marks of the imperial dignity, are confined also to the observation of those points. However, it is to be observed, that in the first of these oaths, which is divided into several interrogatories, there is one which relates to the pope in particular, and is



is couched in these terms; *Vis sanctissimo in Christo patri & domino, Romano pontifici, & sanctæ ecclesiæ Romanæ, subjectionem debitam & fidem reverenter exhibere? i. e.* Will you reverently pay due submission and fidelity to the most holy father and lord in *Christ*, the pope of *Rome*, and the holy *Roman* church?

XX. It is probable, that they began to exact this promise of the emperors, at their coronation in *Germany*, from the very time they neglected to receive the imperial crown at *Rome*, in order, by that means, to supply the want of the oath, which the emperors used to take to the popes upon this occasion, before they crowned them. As the head of the *Germanic Body* continues to be called emperor of the *Romans*; and as he now takes his title, as soon as he is crowned in *Germany*; it was thought very reasonable, that he should also enter into the same engagements as his predecessors, when they went to be crowned at *Rome*. For it was only then, that they assumed the title of emperor of the *Romans*, instead of that of king of the *Romans*, which they derived from their crown in *Germany*, as a fore-runner and earnest of the other.

XXI. When the ceremony of the coronation is ended, the emperor receives the sa-

crament of the holy supper, but only in one kind, viz. the bread. There are narratives of the coronation of some emperors, which expressly relate this particular. And, though there are others that make mention of wine being served to the emperor, in the cup of him who celebrated the mass, it plainly appears, by the terms they make use of, that they do not mean wine that was consecrated. It is astonishing, that he, who is the chief protector and defender of the church of *Rome*, should enjoy no prerogative upon this occasion; and that the king of *France*, who upon the day of his consecration receives the communion in both kinds, cannot do it in the quality of king, but as canon of *St. Denys*. The emperor, indeed, is admitted likewise into the number of the canons of *Aix*; but, as this title is not conferred on him, until after he has received the communion, he cannot enjoy the clergy's privilege beforehand.

XXII. At length the emperor ascends the throne, there to receive the compliments of congratulation, on the part of the electors, from the lips of the elector of *Mentz*. After this, the elector of *Saxony*, or his ambassador, delivers into the emperor's hands the sword of *Charles the great*, with which he creates such gentlemen, as are ambitious of

of the honour, knights of the holy *Roman* empire. The emperor nominates some himself, and every elector has a right to present others.

XXIII. It has been already observed, that the emperor was obliged to invite the electors to his coronation, there to perform the functions of their *arch*, or great offices. It would be too tedious to relate what they are employed in, during, and after the emperor's consecration. I will only say, that as, heretofore, the dukes of the empire, who were invested with those *arch* offices, of which we have made mention elsewhere, only performed those offices of state in extraordinary cases, where they were willing to do particular honour to the emperor; which a very learned professor of the law *M. de Lud-* observes, in his commentary on the *golden* *wig.* *bull*; the electors were easily persuaded by *Charles IV*, the author of this law, to *Golden bull* perform the functions of those great offices, *Tit. 27.* whenever the emperor had a mind to hold a solemn court, because they looked on them as the basis of their electoral dignity.

XXIV. And, if some of the offices, which the electors perform about the emperor, at his coronation, seem, at first view, to be incompatible with their sovereignty; this first



impression soon wears out, by seeing them appear with splendor, very much like to that of the emperor in the great hall, where they eat with him in public, each at separate tables. The emperor is only distinguished from the electors, by his seat being two steps higher than theirs; and by his being waited on by counts of the empire; whereas the electors are only attended by the gentlemen of their own court. The ambassador of an absent elector causes a table to be spread also for his master; but he does not sit down to it; and the plates which are laid on it are covered, but empty.

---

### C H A P. VIII.

*Of the king of the Romans, elected during the life of an emperor, to be his successor in the empire.*

I. **T**HE title of king of the Romans had formerly a two-fold signification. It was given, as we have just now said, to the emperors, until they were crowned by the pope; after which, and not before, they called themselves emperors. They also called him king of the Romans, who, before the death of the emperor, had been

been nominated to succeed him in the empire; provided nevertheless, that he, whom he was to succeed, did already bear the title of emperor. This custom, of not chusing a king of the *Romans*, in the sense in which I here take the term, while he, who governs the empire, only bears that same title himself, was thought by the electors to be so well founded, that they used it as an argument, why they could not, they said, gratify the emperor *Maximilian* I, in the desire he had, that they would, in his own life-time, chuse his grandson for his successor. They argued, that, the emperor himself being as yet no more than *king of the Romans*, properly speaking, because he had not been crowned by the pope, they could not elect another. The pope, nevertheless, had declared by a *bull*, as has been already mentioned, that *Maximilian* ought to be looked upon as much emperor as if he had been crowned with his own hand; and after that time he constantly bore the title of emperor.

II. This subtlety is now intirely fallen to the ground, because the emperors assume this title from the moment that they have been consecrated in *Germany*, and because the title of king of the *Romans* is no longer given, but to him who, during the life of the reigning emperor, is chose to succeed him in

the empire, and eventually crowned on that footing.

Leibn. C.  
D. p. 261.

III. As the *golden bull* does not speak of the election of a king of the *Romans* in the sense which that title is now understood in, it cannot be said that it directly gives the electors a right to proceed to it merely of their own authority. The instance of *Wenceslaus*, whom they chose for king of the *Romans* at the solicitation of *Charles IV*, might be explained in their favour, if that emperor had not owned, in the letter which he wrote upon that occasion to pope *Gregory XI*, that he looked upon that election as irregular and illegal. But, if that election was irregular, the emperor's proceeding was not less so, when he endeavoured to get it approved by the pope. He ought to have applied for this purpose to the states of the empire as the sole dispensers and interpreters of the *golden bull*, in which probably there was not a single word said of the election of a successor to the empire, in the life-time of the emperor, in order to hinder the imperial crown from becoming insensibly hereditary by anticipated elections.

IV. This consideration was one of those which was very much urged by the confederates of *Smalcald*, when they declared to the emperor, *Charles V*, the reasons why they could  
not



not own the election of his brother *Ferdinand* for king of the *Romans*: “ They added, “ nevertheless, that, if the emperor thought “ he had need of a person to share the cares “ of government with him, it was absolutely “ necessary that he should agree beforehand “ with the electors in the sense of the *golden bull*, and that it should be afterwards “ fixed, by a law, that no election of a king “ of the *Romans* should be undertaken, before all the electors together, and six other “ princes who should be joined with them, “ had thought such election consistent with “ the public good.”

*Sleidan*  
VIII.

V. These representations having no effect, the electors proceeded boldly to a second election of a king of the *Romans* in the reign of the said *Ferdinand*; and, as this election was carried in favour of his son *Maximilian II*, for whom the whole empire shewed a very great byass, it met with no opposition. The reign of his son and successor, *Rodolph II*, was still favourable to the electors, so as to establish them fully in the possession of those elections. This emperor was embroiled with his brother *Matthias*, who deprived him of the greatest part of his dominions; and, as this made him afraid, lest that ambitious prince should endeavour likewise to seize the government of the empire,

if

if he could get to be elected king of the *Romans*, *Rodolph* would not consent to his election. The electors being thereby convinced that the imperial court might some time or other thwart them in the election of a king of the *Romans*, when it did not suit with its interest, they stipulated, after *Rodolph's* death, in the capitulation which they made the emperor *Matthias* swear, "That, if  
 " it happened that an emperor, after having  
 " been duly requested by the electors to con-  
 " sent to the election of a king of the *Ro-*  
 " *mans*, should refuse the same, without al-  
 " ledging a solid reason for it, they should be  
 " at liberty to proceed to it without his con-  
 " sent." It cannot be denied that this article, which was repeated in the last capitulation, after having been omitted in those of *Leopold* and *Joseph*, might be very useful in certain conjunctures: but it seems that it would not be an easy matter to put it in execution, if the emperor stiffly opposed such election. For how should they agree in ascertaining who might pass sentence, as a competent judge on the validity or invalidity of the arguments which the emperor should alledge for his refusal.

VI. Such was the state of things with regard to the election of a king of the *Romans*, when the princes and other states of the empire,

empire, seconded by *France* and *Sweden*, who looked upon those anticipated elections as too favourable to the house of *Austria*, demanded at the congress of *Osnabrug*, that it should be inserted in an article of the peace which was then and there in treaty, that the question, concerning the convenience of the election of a king of the *Romans*, should be hereafter decided at the dyet, before the electors could actually proceed to it. But, as this affair met with so much opposition from the emperor and the electors that they had not time to settle it in this congress, there was an absolute necessity for referring it to the next dyet. Since that time several deliberations have been therein held on this affair, of which the following is the result taken from the last capitulation, Art. III. viz. "The electors shall not be  
" too forward in the election of a king of  
" the *Romans*, in the life-time of the emperor, unless the latter absent himself from  
" the empire for ever, or for too long a  
" time, or unless he cannot attend the government of the empire by reason of his  
" advanced age, or some habitual malady, or,  
" lastly, unless some other pressing necessity,  
" which should concern the welfare and  
" safety of the empire, should require recourse to be had to this expedient."



VII. A king of the *Romans* obtains nothing by his election, properly speaking, but the right of succeeding to the emperor on the throne immediately after his death; and it is commonly required of him in the capitulation which he is obliged to swear, that he shall not meddle with the government of the empire farther than the emperor, who is on the throne, shall think fit to commission him. It may happen nevertheless, that in certain cases the election of a king of the *Romans* may be with a view of associating him in some measure to the emperor, and of giving the empire a *second head*, as it were, in his person. The emperor *Charles V.* declared expressly, that he had this view in the election of his brother, and it was probably for this reason that his proposal disgusted the princes who opposed it. The motions made by the electors in the reign of *Ferdinand III.* to chuse a king of the *Romans*, tended also very clearly to this view, that the states of the empire might have in his person a head who should support them in the resolutions which they found themselves obliged to take for the public good, to which they complained the emperor often neglected to attend. The court of *Rome*, with which the imperial court was in strict league, and the death of *Ladislaus* and *Podjebrat*, both kings of  
of

of *Bohemia*, on whom the electors had cast their eyes, made this project miscarry.

VIII. It is natural for the kings of the *Romans*, whatever be the motive of electing him, to hold the first rank in the empire, and that, on all occasions when the emperor on the throne gives him any of his functions in commission, he should exercise them with as much pomp and authority as the emperor himself. It follows also from the nature of the dignity of the king of the *Romans*, that the ambassadors, whom he sends upon such occasion to any foreign court, should hold the same rank there as the ambassadors of the emperors have. But perhaps those particular cases cannot infer or warrant a general rule for the precedence of a king of the *Romans* over all crowned heads, any more than the ceremonial did which was observed at the court of *Vienna* when the emperor *Leopold* had declared his second son king of *Spain*. Particular reasons might determine the emperor to give the first place at his own court to the king of the *Romans*, who was at the same time his eldest son: But these reasons would be no rule for other courts. As for the rest the same rules and formalities, which the *golden bull* prescribes for the election of an emperor, are followed in the election of a king of the *Romans*, and  
the

the electors equally exercise the functions of their office at his coronation, from a desire to give those previous marks of honour to the future head of the empire,

## CHAP. IX.

### *Of the vicars of the empire.*

I. **T**HE golden bull has not only prescribed a remedy for disputes which might arise in the empire upon account of the election of an emperor, but has also taken care to shew after what manner the empire ought to be governed, as often as the imperial throne shall happen to be vacant by the death of an emperor, or otherwise, till his place is filled up by a new election. The princes, who are thereby established as provisors, or vicars of the empire, are the elector *Palatine*, and that of *Saxony*, and it seems to hint that the first ought to exercise that office in quality of count *Palatine* of the *Rhine*, or by virtue of his possession of the *Palatinate* of the *Rhine*, *Ratione principatus, seu comitatus Palatini privilegio*; for, this expression of the golden bull may admit of either of these constructions, which in the main amount to one and the same. The  
elector

A. B. tit.

v. §. I.



elector of *Saxony* is therein described merely by his office of arch-marshal of the empire.

II. As these two high offices of the empire were of great consequence, during even the life of the emperor, it was natural that in the vacancy of the empire the care of providing for its tranquillity and security should turn chiefly upon those who were vested with them. The count *Palatine* of the *Rhine* presided in the tribunal of justice at the imperial court, and signed judgment, without farther appeal, in the name of the emperor and of the empire, in all causes that were brought thither by appeal from every province, provided they did not concern the honour or life of the princes of the empire themselves. The arch-marshal, by virtue of his office, took care of the good order and security of the dyets, in which he exercised a particular jurisdiction over all those who did not come to the place where they were held as members of the empire, but for their own particular affairs, as merchants, or for some other such cause. He was also looked upon, if I may be allowed the expression, as hereditary general of the armies of the empire, and as chief executioner of the criminal sentences passed upon delinquents of the first rank. But, whatsoever the reason was for which the office of vicar of the holy empire

Viz. ch.  
xii.

empire was ascribed in the *golden bull* to the elector *Palatine* and the elector of *Saxony*, it is not to be doubted that their right was antecedent to that constitution, because it speaks of these offices as of a thing known, and because the other electors (that of *Mentx* in particular) would have infallibly disputed them with those princes, if they had thought that disposition as a new thing.

III. When I give the opinion that has been most generally embraced upon this article hitherto, I do not mean to enter into the dispute which arose about the exercise of the vicariate between the elector of *Bavaria* and the elector *Palatine* in the interregnum which preceded the election of the emperor *Leopold*. The arguments, which I just now mentioned in favour of the *Palatine* family, were there pressed very close: That of *Bavaria* maintained, on the contrary, that the rights ascribed by the *golden bull* to the count *Palatine* of the *Rhine*, were transferred to it's family together with the electorate and office of high-steward of the empire, which, tho' formerly possessed by the *Palatine* family, the latter was obliged to yield to that of *Bavaria* by the treaty of *Osnabrug*.

IV. This, and other arguments that were made

made use of, taken from the nature of the office of arch or high steward of the empire in *German Ertz-Truchses*, were very specious; and *Ferdinand Mary*, the then elector of *Bavaria*, made such an advantage of them by his diligence, and the art he used to bring over the elector of *Saxony*, as joint vicar of the empire, into his opinion, as well as the imperial chamber, which dispatches all the business in the name of the two vicars during the whole course of the interregnum: The elector of *Bavaria*, I say, enforced his arguments so well, that he maintained himself for that time in the possession and exercise of the vicariate, in spite of all the opposition which the elector *Palatine* could make.

V. But the latter family was, in its turn, more fortunate during the interregnum, after the death of the emperor *Joseph*. The elector of *Bavaria* had then brought himself under a sad disgrace, by his great attachment to *France* in the war that all *Europe* was involved in for the succession to the *Spanish* monarchy. The emperor *Joseph* had put him under the ban of the empire, and restored the *Palatine* family to the rank which it had possessed in the electoral college before the treaty of *Osnabrug*. By this means the elector *Palatine* at that time resumed the possession of the vicariate, and exercised it without molestation. But, the elector of

H

*Bavaria*



*Bavaria* being restored, by the peace of *Baden*, to his former state, and to all the rights and prerogatives which he enjoyed before the revolution I am speaking, there was reason to fear, in the last interregnum, the disputes of the two families would have revived, and that great inconveniencies would have been the consequence, at the crisis into which the empire was fallen by the death of the emperor *Charles VI.* of glorious memory, if those august families had not agreed the matter between themselves, to the great satisfaction of all those who love the public tranquillity, by exercising the vicariate of the empire in common, that share of it I mean, which is assigned by the *golden bull*, to the count *Palatine* of the *Rhine*.

VI. This public constitution treats so succinctly of the right of the vicars, that it could not be believed it intended to confine it to those things only of which it makes express mention. It is much more probable, that, with regard to the right of governing the *Germanic Body*, there ought to be no other difference between the emperor and the vicars established by the *golden bull* in the name of the holy empire, than that which is expressly stated in it, or which very naturally arises from the personal dignity of an emperor which is not communicated to the vicars. This opinion is supported,

ported, moreover, by divers capitulations, which, speaking of the rights of the vicars, do not make mention of those only which are allowed them by the *golden bull*, but those likewise which are founded on ancient practice, and upon other laws and privileges. It is also evident, in fact, that the vicars of the empire have, without opposition, exercised several rights which the *golden bull* says nothing of, such as the right of conferring honours and dignities, legitimating, granting dispensations of age, and other matters which the emperor exercises as *reserved rights*.

Cap. de  
Char. VI.  
art. ii.

VII. One of the finest prerogatives of the empire, and which the vicars are by the *golden bull* expressly forbid to exercise, is that of granting the investiture of the fiefs which are given by the standard, whereby we are, no doubt, to understand those fiefs which the princes of the empire receive before the imperial throne. The reason of this prohibition is very natural; for the dignity to which an emperor is advanced, and for which the states of the empire shew him so much submission, could not be communicated to the vicars, whose character in itself gives them no rank, nor any personal superiority.

VIII. As, among the several rights enjoyed by an emperor, there are some which he ex-

exercises with the concurrence of the states of the empire, and others which he exercises himself alone, by the name of *reserved rights*, which will be more particularly treated of hereafter; so the vicars of the empire use them in a different manner. They make use of the former in their common name, such as, for instance, the emperor's prerogatives at the imperial chamber and at the dyet, and the mandates that are to be made for the whole empire in general. On the contrary, they exercise the reserved rights of the emperors, each separately in the proper district assigned them by the *golden bull*, by dividing the provinces of the empire, to use the very terms of the said constitution, "into those which are in the parts of the *Rhine* and in *Swabia*, and the *Franconic right*; and those wherein the *Saxon right* is observed." I shall not stop to explain the reason of this division of *Germany*, which probably does not so much relate to the difference of the civil law which was then in use there, as to an ancient division of the people subject to the kingdom of *Germany*, into the *Franks* and *Saxons*, which is frequently mentioned by the historians. It shall suffice to say, that at this time the provinces which are included in the circles of the *Upper* and *Lower Rhine*, and in those of *Swabia*, *Franconia*, *Bavaria*, and *Austria*, are commonly placed



placed in the class of the provinces of the *Franconic right*. On the other hand, those provinces which are situate in the circles of the *Upper* and *Lower Saxony*, and that of *Westphalia*, are ranked among the provinces of the *Saxon right*. I make no mention here of the circle of *Burgundy*, because we shall find hereafter, when we come to consider the division of the empire into ten circles, that the circle of *Burgundy* may now be looked upon as separated from the *Germanic Body*.

IX. Each vicar, for the dispatch of such affairs as relate particularly to the district of his vicariate, establishes an aulic council at his court, in imitation of the imperial aulic council, which will be treated of hereafter, and whose jurisdiction and agency ceases at the death of the emperor. The elector of *Bavaria* and the elector *Palatine* agreed, in the late conjuncture, to establish one in common at the city of *Augsbourg*, and jointly named the persons that were to compose it, for dispatching the affairs of its jurisdiction in their name.

X. By what has been said, it is plain that the rights of the vicars of the empire are in themselves of very great dignity, because, bating a very few things, they are as extensive as those of the emperor himself. But,

when, on the one hand, we consider the short duration of the common interregnums, and on the other, with what caution the emperor himself is obliged to use his rights and prerogatives, it may be easily inferred that those of the vicars must, in fact, amount to very little; and that recourse is seldom had to the *aulic council of the vicariate*, but for those affairs which require speedy care of them and such, as happen in the country where they may give some weight to their arrets and mandates by their own power. It was, perhaps, for this reason, that the regulation made between the *Bavarian* and *Palatine* families, for the joint exercise of the vicariate of the empire, was disliked by the elector of *Mentzi*, and some of the members of the circle of *Swabia*, for fear lest the united strength of those two families should give too great a lustre to their authority.

XI. Whatever is done by the vicars during the vacancy of the empire, by virtue of their office, and conformably to the public constitutions of the *Germanic Body*, has all the validity that is necessary. However, to guard still more against any alteration being made in it by the emperor who is called to the throne, they take care to make him promise in the capitulation, "That he shall confirm firm

“ firm and ratify, in the best manner, every  
 “ thing that they did by vertue of their of-  
 “ fice during the interregnum.” After all,  
 it is but just that the capitulation of the last  
 emperor should be respected by the vicars as  
 one of those public constitutions that are to  
 regulate their functions, because they cannot  
 presume, with any grounds, that more power  
 should be granted to them than what the de-  
 ceased emperor had.

XII. Forasmuch as the *golden bull* expressly  
 confirms the office of the vicars of the em-  
 pire in the vacancy of the imperial throne,  
 it from thence clearly follows, that it ceases  
 the very moment that the said throne is filled  
 by a new election. We find an article indeed  
 in the capitulation of the emperor *Joseph*,  
 wherein “ the vicars, of whom I am treating,  
 “ reserved to themselves expressly, that, in case  
 “ the emperor *Leopold* should die before his  
 “ son was entered into the eighteenth year,  
 “ they should have the right of governing the  
 “ empire till he had attained to that age.”  
 It is also said in the capitulation of the  
 emperor *Charles VI*, who was not yet re-  
 turned from *Spain* at the time when he was  
 elected, “ that the said vicars should continue  
 “ to exercise their office till that prince was  
 “ arrived in the empire, and till he himself  
 “ had sworn to the said capitulation.” But it

Art. xlvii.



is easy to see by the very terms of these two articles, that in both cases these vicars were to be deemed vicars of the emperor, more than vicars of the empire.

XIII. Indeed an emperor is at full liberty to charge any prince of the empire with the exercise of the imperial functions, when any thing happens that does not permit him to attend them himself. But the authority of a vicar, whose right is derived from the emperor's grant, and who therefore can only be deemed as vicar of the emperor, is widely different from the authority of those to whom the government of the empire is committed by the *golden bull*, and who for this reason are called vicars of the empire. The former may be obliged to give an account of his behaviour to the emperor himself, who has also a right to annul what has been done without his approbation; whereas what is done by the latter must needs subsist by virtue of the power which the law gives them, and is not liable to be revoked or annulled by the emperor, as is just now observed.

XIV. I say nothing at all of the vicariate of the empire in *Italy*, which the dukes of *Savoy* exercise principally, because authors are not agreed either as to its original, or its extent. I will only observe, that the most able civilians

civilians in the empire are of opinion, that, if any business is to be dispatched, during the interregnum, with regard to the vassals of the empire in *Italy*, it ought to come from the vicars established by the *golden bull*; and this their opinion seems to be supported, by the practice in the last interregnum but one, with regard to the duchies of *Parma* and *Modena*; and by what was said, of the vicariate in *Italy*, in the 26th article of the capitulation, of the last emperor but one.

## CHAP. X.

*Of the feodality of the members of the empire, by which they are linked to their head, and to one another. The compatibility of this quality with sovereignty.*

I. **I**T has already been observed, (*chap. iii.*) that it was convenient, that the vast *Germanic Body*, composed of so many members, differing one from another, in many respects, should have one common head, to link it's members together, and to put them in motion. We will now endeavour to explain the nature of this union of the head and members, by means of *feodality*; and shall demonstrate, that though this union externally

externally resembles that union which is in limited monarchies, between the monarch and those who concur with him in the government; and though, upon this consideration, the *Germanic Body* is with reason called an *Empire*; yet, it retains all the essentials of a compound state; and consequently, the members, who constitute a part of it, are each as much sovereigns in their own country, as the natural aim of a confederacy can possibly permit.

II. The manner, in which the members of the *Germanic Body* are linked with the emperor, as their head, consists in their acknowledging the countries which they possess to be fiefs of the empire, and in receiving the investiture thereof from their hands; the electors and princes of the empire, both spiritual and temporal, before the imperial throne; and the counts, and barons, who have votes in the dyet, from the aulic council of the emperor and empire.

III. This custom of possessing a country, with the title of a fief of the crown; that is to say, with a particular obligation of fealty to the empire of which it holds immediately, and, to him who is the head of it, derives its true origin from the government of the *Franks*, and from their method of dealing with



with the people whom they subdued. The kings judged, very rationally, that they could not better establish their empire in the conquered provinces, than by distributing them among the nobility, who had followed their standards; with this condition nevertheless, that the persons, to whom they granted the government, and revenues thereof, bating certain things, which they reserved for domains of the crown, should engage themselves to them in fealty, and in military services too, whenever the welfare of the state required it. And, if in a conquered nation, any one submitted to their arms by fair means, they were very well content to leave him in the possession of his territories, and his government, under the same condition. This method of securing themselves of the fidelity of the principal subjects was not only very proper, for extending and establishing the conquests made by the *Franks*; but very consistent also with the character of a nation so warlike, and so jealous of their freedom, as were those conquerors, and the other *Germanic* people that ranked themselves under their dominion.

IV. There happened nevertheless, as we before observed, a great change with regard to those fiefs, by their insensibly becoming hereditary; whereas, at the beginning of that  
esta-

## The GOVERNMENT of the

establishment, they were only granted for life; and, after the death of the possessor, who held the same, with the offices above-mentioned, the king was at liberty to confer them upon other persons. But, though this alteration was one of the principal means, by which the vassals of the crown attained to sovereignty, they nevertheless found, that it was not convenient for them to separate themselves intirely from the empire, to which they were subject; not only, because they should perhaps ruin themselves by jealousies and civil wars, which might arise from their disunion; but also, because they would not separately be in a condition of resisting the barbarous nations, which at that time infested and ravaged the north and east parts of *Germany*.

V. When *Charles the gross* was deposed, and the *Carlovingian* race of kings was extinct in *Germany*, the great vassals of the empire had an opportunity to have formed separate states, but they did not embrace it: On the contrary, they chose rather to preserve to themselves a common head, and to continue to acknowledge their provinces for fiefs of the empire. Indeed, nothing could better answer the end of those who were inclined to form themselves together into one single body politic, than to consider

consider the dominions which they governed, as a part of the whole empire, and to engage themselves to persevere in a strict and constant union with it; to concert the necessary measures for the public weal, jointly with the other members, and to undertake nothing against the interest of the whole body. Having, moreover, formed a resolution to chuse themselves always one common head, and to regard him as the center of their union, and as the representative of the sovereign majesty of the empire, it was very natural for each of them to declare before him who 'was advanced to that dignity, that he would be faithful to the empire; and that he would pay to the head of the whole body all the respect and submission, which that union demands. If the state of the members of the empire has not been such, since *Charles the great's* descendants ceased to possess the *Germanic* throne, it appears, however, from history, that they have had that view ever since, and a man must wilfully shut his eyes, if he does not see this system in the present government of *Germany*.

VI. In this state of things, it must be owned, that the obligation which the electors and princes of the empire are under, even at this day, to acknowledge the dominions which they possess for fiefs of the empire, and



and to receive the investiture thereof before the throne of the emperor, is not incompatible with their sovereignty; because the oath, which they take upon this occasion, only engages them not to exercise their rights of sovereignty, to the prejudice of the common good of the empire; nor in such a manner, as may injure the honour and respect that are due to him who is the head of it. It is true, that the humble manner, in which the princes of the empire desire the emperor, by their ambassadors, to grant them the investiture of their dominions; and the elevated station in which he appears, when he grants it to them; not only dazzles the spectator's eyes, but sometimes induces the emperors themselves to confound the fiefs of the empire with the common fiefs which are actually derived from him who grants the investiture of them; and who, by consequence, has much more right over his own vassals, than the emperor could possibly arrogate to himself over the vassals of the empire.

VII. Now, nothing is a plainer proof, that the fiefs which the latter possess, do not, properly speaking, hold of the emperor, but of the empire, than the precautions that have been taken to hinder the emperor from opposing the renewal of the investiture of those fiefs; and that, in case any of the  
great

great fiefs of the empire should become vacant, by the extinction of those who have a right to succeed thereto, the emperor might not have it in his power to dispose of them as he pleased, after the manner of one, who is truly the direct lord of the vassal. The second article of the capitulation of Charles VI says, expressly, " That the emperor shall  
" grant to the electors, princes, and states of  
" the empire the investiture of their dominions, without any contradiction or opposition; and that he shall not extend the  
" engagement which those vassals are under  
" to the empire, *in favour of his own family*;  
" that if a considerable fief of the empire,  
" such as an electorate, principality, county,  
" or lordship, or free city, should happen to  
" become vacant for want of successors, or  
" by deprivation for the crime of rebellion,  
" such electorate should not be given to another, without the consent of the electoral  
" college; nor such principality, county, and  
" lordship, without the consent of the college of the electors and princes; nor,  
" without the consent also of the college of the free cities, if the case related to a free  
" city. That it shall not be in the emperor's power to grant reversions upon any  
" fiefs, but that they shall be reserved and  
" set apart for the exigencies of the empire,  
" and the maintenance of the emperors. It  
is

“ is also said, at the end of the tenth article  
 “ of the said capitulation, that the emperor  
 “ himself shall not fail to receive from the  
 “ empire the investiture of the vacant fiefs  
 “ which should come to his family, with the  
 “ approbation of the states of the empire ;  
 “ or to acknowledge those fiefs, by some  
 “ declaration in writing, if the method of  
 “ investiture was not agreeable or feasible.

VIII. What I have just now said, of the nature of the fiefs of the empire, and of the engagements of those who receive the investiture of them, shews also, in what case it may be truly said, that a member of the empire has acted contrary to his duty to his chief, and what care must be taken not to confound what may injure the emperor as such, with what is contrary to his interests in any other quality ; as for instance, in the quality of sovereign of some province included in the rank of his own dominions ; the rather, because it has often happened, that the emperors seemed to have forgot this distinction, by looking upon an alliance opposite to the particular interests of their family, even as to countries which had no connexion with the empire, as contrary to the obligations the princes of the empire are under to the emperor, in quality of head of the *Germanic Body*.

IX. It



## CHAPTER XI.

I. **A**FTER the reflections, which I have just now been making upon the nature of an oath of fidelity, by which the members of the empire are linked to one another, and to their common head, it is natural to expect, that I should also speak of the measures which have always been taken

either against the former, when they have dared to violate their engagements in a palpable manner ; or against the head himself, when he has offered to infringe the liberty of the whole body.

II. In the case, where a member of the empire rendered himself guilty of the violation of his fidelity, the emperor had a right to have an enquiry made into the articles of accusation that were brought against the delinquent, before a tribunal, composed of some of the chief vassals of the empire, who were selected chiefly out of the province, which was that of the person accused. In history, we meet with several instances, where the abhorrence of the judges, for an open and notorious breach of faith to the emperor and empire, went so far, that they did not hesitate to pass sentence of death upon the person who was convicted of such a crime ; as happened, among others, to *Tasfilon*, duke of *Bavaria*, who confederated with the *Huns*, against the emperor *Charles the great*. But, excepting some counts, and this too in the remotest times, we do not find that one sentence of death was actually put in execution. In after times, the person who had acted as an enemy of the emperor and empire, was only put under the ban of the empire,

pire, that is to say, deprived of his dignity, and his dominions.

III. This method of proceeding against the members of the empire, who were capable of forgetting their fidelity towards the whole body, and it's head, not only secured the tranquillity of the empire, but seemed, at the same time, very proper to guard the innocent, against the unjust violence with which a powerful and ambitious emperor would have treated them. But, as those who are more led by passion than justice, often find means to make a bad use of constitutions and ordinances that are the wisest and most equitable in themselves, there will be found perhaps, upon a calculation, as many, and even more instances, where the ban and proscription have been unjustly exercised, than of such where the like proceeding has been, in all respects, just and impartial.

IV. One would have thought, that, the nearer territorial superiority of the states of the empire approached to the nature of real sovereignty, there would have been the fewer occasions of employing the *ban of the empire* against them; and that there would have been the more precautions taken against the incroachments of a powerful emperor. But it happened quite contrary. The erecting of the aulic



council, on the foot which the emperor *Maximilian I.* placed it upon, and as it stands even at this day, put a final end to the ancient custom of judging affairs that related immediately to the persons of the princes, and other members of the empire, by a council formed out of their own body. We read the fatal consequences of this, in the reign of *Charles V.*, who, with regard to *John Frederic*, the elector of *Saxony*, and *Philip the magnanimous*, landgrave of *Hesse*, the two chiefs of the *Smalcald* league, so little minded what he had promised to observe in his capitulation, touching the exercise of the ban of the empire, that he did not scruple to declare both of them deprived of their dignity and dominions without form of law, and even to pass sentence of death upon the first.

*V. Ferdinand II* copied his predecessor, in his procedure against the elector *Palatine*, and his adherents, which we have mentioned already. But this irregular conduct so alarmed the whole empire, and the electors in particular, that they obliged the succeeding emperors to swear in their capitulation, " That  
 " they would no more put the ban of the em-  
 " pire in execution, without mature consul-  
 " tation with the electors assembled in a bo-  
 " dy, and without their unanimous con-  
 " sent."

Cap.  
*Leop.*  
 Art. 28.  
 & *Joseph.*

VI. The

VI. The emperor *Joseph* thought he had observed this article of the capitulation, in the proscription which he caused to be published, in a very solemn manner, against the last elector of *Bavaria* but one, and his brother, the elector of *Cologne*. But as it had been already agreed, at the dyet, in the form of a perpetual capitulation which had been just drawn up there, that there ought to be still greater precaution used, in the proceeding against a member of the empire accused of rebellion, several of the princes were of opinion, that the said emperor ought to have paid some regard to it.

VII. The representations which they made at that time, to the imperial court, had this effect, that the electors inserted what the said form of perpetual capitulation says, upon this article, *verbatim*, in the capitulation of the late emperor *Charles VI*; this is the substance of it: "The emperor shall take care, Art. 10.  
 " that, hereafter, no member of the empire,  
 " of what rank soever, be put under the ban  
 " without sufficient reasons, nor without  
 " being heard, nor without the opinion and  
 " consent of the electors, princes, and states  
 " of the empire; that the tribunals of the  
 " empire, before whom process shall be  
 " made against the accused, shall send their

“ opinions and acts of process to the  
 “ dyet, where the same shall be revised by  
 “ the deputies of the three colleges, a like  
 “ number of each religion, and particu-  
 “ larly sworn for that purpose; who shall  
 “ afterwards make a report of the result of  
 “ their conferences to the electors, princes,  
 “ and states; and, when these have agreed  
 “ in a definitive sentence, and the same has  
 “ been approved by the emperor, he shall  
 “ cause it to be published in his name, and  
 “ executed by the duke of the circle, of  
 “ which the person condemned happens to  
 “ be a member.”

VIII. It would have been still more ser-  
 viceable and agreeable to the dignity and  
 present state of the princes of the empire, of  
 those especially, in whom there shines a so-  
 vereignty, which is equal, by it's preroga-  
 tives, to that of crowned heads, that they  
 had likewise agreed on a change of the form  
 of the ban; and that they had struck out of  
 it that part which is no longer consistent  
 with the present form of the *Germanic Body*.  
 But, with what pomp soever the emperors  
 have hitherto published a sentence of this  
 nature, they who know so much of politics,  
 as to distinguish the reality of things from  
 the appearances, will not deny, that this  
 method of proceeding against a member of  
 the



the empire, accused and convicted of having acted against the common good, cannot subsist very well with the sovereignty of the states that together form one and the same body, of which the holy empire contains all the essential qualities. For the publication of the ban of the empire is, properly speaking, a declaration of war, made against the person whom it concerns, after a just enquiry into his conduct, directed by them, who by virtue of ordinances in which the whole body is agreed, are authorized to proceed to it. *Greece* furnishes us with instances of such a conduct, observed by the confederate cities, in a body, against persons that had rendered themselves guilty of a manifest violation of the laws of their confederacy; and whose execution of the resolutions taken against such delinquents, their liberty, or their independency, was not once disputed. There are certain flatterers of the imperial power, who endeavour to infer an argument against the sovereignty of the states of the empire, from the prerogative which the emperor enjoys to publish in his own name, and to order the execution of the arrest of the ban against those who have incurred it. But as they would undoubtedly reject the argument, if any one that should infer from the right which is acknowledged in the states of the empire, to depose the

I 4

emperor,

emperor, that he therefore depends on those who depose him, so they must own that their own argument is not conclusive.

IX. History furnishes us with a great many instances of kings and emperors who were deposed by the *German* nations over whom they reigned; which is the less surprising, when it shall be considered that the government to which those nations were strongly attached, and which they introduced into all the countries where they settled their dominion, was such that the great men of the kingdom shared the sovereign power with the king, of whom they required that he should be as religious and faithful in the observation of his engagements, as he himself desired the other should be in the offices which they exercised under him, each in his respective province. If they had any complaints against the king's administration, they desired the redress of them at the general dyet, or at those which were held in the province which was the particular sufferer by those grievances. And tho' the bishops were likewise present at the said dyets, whether general or provincial, they had no more right to make remonstrances to the king than the secular princes, till the time of the revolution which ended in the deposing of *Chilperic*.

*peric*, the last of the kings of the *Merovingian* race.

X. As *Pepin* ascended the throne at that period, by the special assistance of the pope and the clergy, and as the people were made to believe that it was heaven itself which established that prince over them, the bishops would have it thought, from that occasion, that they were principally authorised to controul the government of kings, and to declare them to have lost their right of governing, whenever they were accused of making a bad use of it. Of this there was a remarkable instance in the person of *Lewis the debonnaire*, whom the bishops twice deposed and restored to the crown with a great air of authority. The deposing of *Charles the gross*, *Henry IV*, *Otto IV*, and *Frederic II*, was also chiefly the work of the bishops, supported therein, after the deposing of *Henry IV*, by the popes, who readily lent them their thunder for the more effectual blasting of the person whom they would deprive of the crown. The court of *Rome* was also often the first to put the *German* princes, both spiritual and temporal, into a combustion, by fulminating excommunication against the emperors, and by that means furnishing the malecontent vassals with a cloke of religion to cover their wicked lives. These resolutions,



tions, however, for the deposing of emperors were always formed at a dyet of the states of the empire, if we except only the emperor *Frederic II*, whom the pope caused to be deposed by the council at *Lyons*; from whence he issued an authentic command to the bishops of *Germany*, to proceed with the other princes of the empire to the choice of a new emperor.

XI. Therefore, as the archbishop of *Mentz* expressly declared at the election of *Henry V*, in the room of his father who was deprived of the crown, it was looked on as an undoubted point, that "They, who had a right to elect the emperors, had also a right to depose them." And it was in conformity to this principle that the electors, in the reign of *Adolphus* of *Nassau*, thought their authority sufficient for deposing that prince, because they were actually at that time in the exclusive possession of choosing the emperors. They gave even a farther demonstration of the right which they claimed of deposing the emperors, by depriving *Wenceslaus* of the imperial dignity with the appearance of due form of law; and, tho' they did not neglect to bring some of the princes and counts of the empire into their party, it was not so much to give a more legal sanction to the sentence which

which they passed against *Wenceslaus*, as to render the execution of it more easy.

XII. It is not to be doubted, but all those instances that I have now mentioned, of the deposing of the emperors, are liable to very great cavil; but this consequence may at least be clearly deduced from them, that the states of the empire thought they were justified, conformably to the nature and end of civil societies in general, to own him no longer for their head who should undertake to govern the *Germanic Body* in a manner contrary to the liberty of it's members, and to the obligations imposed on him by the fundamental laws of the empire, and the oath which he takes at his coronation. The states of the empire, by acting according to this principle, and taking the necessary precautions against every infringement of the laws, and against every oppression of their liberty, do nothing but what is dictated to them by reason and prudence. But it would be neither serviceable to them, nor decent for the head of the empire, that they should extend their precaution so far as to wish it inserted in the capitulation of an emperor, That, as soon as he infringes any one article of it, he should be deemed, *ipso facto*, to have forfeited his dignity, and that the electors

tors should be at liberty to supply his place by another.

XIII. The electors would seem also to go too far, if they were to summon an emperor before them, and condemn him as judges, tho' it be particularly incumbent on them to watch the emperor's conduct, to make vigorous, tho' respectful representations to him on the complaints made against his government, and, in case their remonstrances should be openly despised, to take the most proper measures to stop his illegal and dangerous enterprises. For, acting thus, nobody could blame them, if, at length, when things were come to such an extremity, they should proceed to the deposing of the emperor, or the electing of a king of the *Romans* to whom they might then trust the safety of the state, as, I before observed, they had thoughts of doing in the reign of the emperor *Ferdinand III.* No doubt, prudence dictates that the electors should concert all these measures with the other members of the empire, if they would not have them miscarry. And it would seem, moreover, that, considering the present state of the *Germanic Body*, they could not slight their consent, without infringing the right which appears to have been granted them by the eighth article of the peace of *Osnabrug.*

XIV. After



XIV. After all, what the *golden bull* says of the elector *Palatine*, as the judge before whom it is lawful to convene an emperor, relates only to the disputes which he may have, considered as a private man, on account of civil causes, with respect to which it was natural they should be referred to the count *Palatine*, because he was anciently the ordinary judge in the emperor's court, and supreme in the empire. No prince that has a regard for justice, refuses to answer complaints of this nature at the tribunal which themselves have declared competent for that purpose, and to let justice have its free course in the law-suits which they may have as private persons.

Tit. v.

§. 3.

## C H A P. XII.

*Of the imperial chamber; and of the aulic council established for trying the processses of the states of the empire, and for thereby maintaining the public peace.*

I. **A**FTER having given a general account of the head of the *Germanic Body*, and of those who, in some circumstances, supply his place, it is now time that I should

should run over the chief prerogatives which he enjoys in the government of the empire, beginning with that which he exercises in the administration of justice, which is the principal basis of the peace and safety of the *German* dominions, and the thing which they who govern them ought to have most at heart. It may be said, that the administration of justice was no where observed with more care, and, in a manner more adapted to the welfare of the public, and of particulars, than in *Germany*; so long as a respect was there paid to the wise laws and customs of the *Franks*. Every province was at that time divided into a certain number of cantons, which were subdivided into several little *bailiwics*. Each of those cantons and bailiwics was furnished with a chief who exercised justice there with the title of count; and as those counts were sometimes obliged to follow the standards of the empire for military expeditions, which diverted them from their office of judges, they had in every bailwic a substitute who had the title of *præfect*, and whose assessors were stiled *ecchevins*.

II. Besides those judges established in every province, there was also at the king's court a sovereign tribunal under the direction of the count *Palatine*, to whom the clients might appeal from any sentence of the counts

counts by which they thought themselves aggrieved. Besides this, the kings sent their commissions once or twice a year through all the provinces to try such causes there as were not triable by the counts, or as were removed by appeal to the king's bench.

III. If there was any difference between the counts themselves, or between the counts and a superior member of the empire for any civil cause, the king's commissioners had also the power to decide it; and in defect thereof it was referred to the count *Palatine*, who tried the cause in the king's presence. But if the affair related to honour and life, or to the office and territories of a duke, or of a count, it could only be decided at a general or provincial dyet, at which the king was present. The differences that arose in the royal family, and the complaints that were formed against the king's government, were also laid before the dyet, or before an extraordinary council formed by the principal vassals of the crown. *Lastly*, The count *Palatine* judged of processess commenced with the king for a civil cause, and considered as a private person.

IV. This good order, with regard to the administration of justice throughout the whole empire, was kept up as long as the kings



kings and the emperors were able to maintain themselves in that just authority which was granted them by the laws. But when that authority was shaken by the civil wars, and by the revolutions that we mentioned when we pointed out the measures by which the states of the empire rendered themselves sovereigns in their own countries, things assumed quite another face. As it was not safe to go to try a cause in the emperor's court, and as the execution of the sentence therein obtained would have been still more difficult, the dukes, as the most powerful members of the empire, took occasion from thence to set up tribunals in their own provinces; and the states of the country readily consented to it at first, because the dukes concerted with them the laws and ordinances which the judges of those tribunals were to follow in their process and their decrees.

V. The emperors likewise erected new tribunals in the provinces which had formerly an immediate dependence on the crown, and in which their authority was by consequence better kept up, and gave those tribunals a power to try the causes, which, I said before, might be carried by appeal from the tribunal of the counts to that of the court. Such was, in particular, the aulic council which the emperor *Conrad III.* established  
in

in 1145 in the city of *Rotweil*, whose jurisdiction extended over all *Swabia*, and whose authority continued very great even to the reign of the emperor *Maximilian I*, in which we shall soon find that the two sovereign tribunals of the empire subsisting, even at this day, were erected.

VI. Before this change, the empire was a long time in a very sad condition with regard to the administration of justice, especially when the point in question was the deciding of controversies and processes between the states of the empire. The more the authority of the emperors fell to decay, during the troubles which disturbed their reigns, the more did the members of the empire accustom themselves to have recourse to their own strength, and to decline the tribunals of the empire, whose authority was now become precarious. These disorders spread so far, during the long interregnum, occasioned by the deposing of *Frederic II*, that they would, in all probability, have overspread the empire, if they had delayed any longer to provide the empire with a new head.

VII. The parties which had any disputes, tried several times, indeed, to compose them by arbitrators, to whom such as owned no superior commonly recurred. But this me-

K

thod

thod of putting an end to disputes, scarce succeeds farther than as the parties are pleased to acquiesce in the sentence of the arbitrators, because the latter cannot derive a right of executing their sentence by force, from the consent of those who employ them. There was a necessity, therefore, of having recourse to another remedy for giving such a power to these judges; and this remedy consisted in confederacies that were formed by the free cities of the empire, and several other members of the *Germanic Body*, after their example, with a view to maintain the public peace, and in which they agreed, both in the manner of adjusting the disputes that should arise among the confederates, and the methods that ought to be employed against those who disturbed the public peace and security.

VIII. But what curb is strong enough to check those who find themselves very much superior in force; and how can such be good friends very long, whom the jealousy of rank and of prerogatives keeps continually at variance? Those jealousies were the cause that the confederacy of the princes and towns was of no long duration, and that their rupture produced fatal wars. Some of the emperors, being in hopes of making an advantage of these divisions for the re-establishing of their



their authority, commonly favoured the cause of the towns from which they found least opposition to their government. But *Wenceslaus*, who made use of this policy, had like thereby to have involved himself at the beginning of his reign in all the disgrace that he fell under afterwards. He escaped it then, indeed, only by taking part with the princes, and leaving the towns to be oppressed; after which it was agreed to abolish all those confederacies which discover the weakness of those at the helm, and to maintain the public peace by resolutions that should be taken at the dyets against those who attempted to infringe it.

IX. Mean time it was more visible every day than other, that it was not possible to confirm this peace without establishing a tribunal to be respected by all the members of the empire. But the difficulty was to get the consent of the emperors for fixing this new tribunal on such a footing, that all those members might have a share in it. The desire of the public tranquillity ought to have determined the emperors to grant their consent to this; and *Frederic III.* who would not comply with the strenuous solicitations of the electors, and the other members of the empire, might have been convinced, by his own sad experience at every turn, that in the then

state of the *Germanic Body*, the emperors were absolutely under a necessity of the concurrence of the empire, to give the greater weight to their authority. But it was not till the reign of his son *Maximilian I*, that a work so desirable, and so necessary for the public tranquillity, was finally accomplished. Perhaps he would have deferred it, as his father had done, if he had not stood in need of the assistance of the empire to revenge the affront which he had just received from the king of *France*, by carrying off the rich heiress of the duchy of *Brittany*, and to put a stop to the designs of that court upon *Italy*.

Charles  
VIII.

X. It was agreed, therefore, at the first dyet that was held, *anno 1495*, in the reign of *Maximilian I*, at *Worms*, that a tribunal should be erected, of which the emperor and empire should name the judges, and whose process they should regulate by good decrees. At the same time a constitution was agreed on, by which all forcible means were prohibited throughout the whole empire, and for ever, under the severest penalties. And, to the end that the resolutions which they had then taken, as well as the sentences which the new tribunal should pronounce, might have the greater force, the whole empire was in a little time after divided into

into ten circles, in each of which the most proper regulations were concerted for the maintenance of the public tranquillity, as we shall see hereafter. This sovereign tribunal of the empire had the name of the *imperial chamber*, which title it still retains, tho' it is sometimes called the *chamber of Wetzlar*, because it has had its seat in that city since the year 1696, after the plundering of the *Palatinate*, and of the city of *Spire* in particular, where the imperial chamber had its residence before from the year 1530.

XI. Nothing was more reasonable than the desire of the states of the empire, to have a tribunal among themselves that might judge of their differences in a way suitable to the *Germanic* liberty, which was not now much short of sovereignty. That was, indeed, the only means to hinder each of them from having recourse to his own strength, and to prevent the weakest from becoming a party to the strongest. The emperors also kept up all the prerogatives suitable to their dignity, and to the welfare of the body, of which they are the head. All sentences and mandates were not only allowed to be published and executed in their name, " but to " them also was reserved the cognizance of " the causes which related to the principa- " lities, duchies, counties, and other great



# The GOVERNMENT of the

chiefs of the empire, whenever the question was for adjudging them totally and finally to one or other of the parties." It were only to be wished, for the sake of the states of the empire, that they had not forgot their views at the time when they ought to have redoubled their efforts and vigilance for the execution of the wholesome resolutions of the diet, and to have given quick motion and wings to the tribunal which they had now established.

XIII. Their negligence in this point was the reason that the emperor *Maximilian* himself, who was very hardly persuaded to close with the instances of the empire for the formation of the imperial chamber, found an opportunity to regain, with interest, the advantages which he seemed to have lost by sharing the right of jurisdiction with the states: for, *Maximilian* having observed, that the said chamber was often shut for want of assessors, and by the delay of the contributions that were to pay the judges and the subaltern officers, of which this tribunal is composed, he made such frequent interruptions of the chamber, as handle for reviving the tribunal which was formerly kept at the court of the emperors. Mean time, as he plainly saw the necessity there was that the states of the empire should enter into his plan,

plan, he proposed it to them, to concur with him, in the re-establishment of this council, by the addition of eight persons to it, on their part, not doubting, but the said states would be as indifferent, how they discharged the engagement they should enter into with him, upon that head, as they actually were about the appearance of the assessors of the imperial chamber; and that by this means his new aulic council would soon be entirely dependent upon himself. The event answered his expectations; and, when he and his successors saw that they began to bring causes into this court, they took care to give it the greater credit, by two substantial advantages, which they gave it over the imperial chamber. The first was, not to bind the judges of the aulic council to all the forms which lengthened the proceedings in the imperial chamber: and the second, was to be very diligent to facilitate and hasten the execution of its decrees.

XIII. The states of the empire were not sensible what injury they did themselves, by the abatement of their zeal for the imperial chamber, and by their connivance in favour of the new aulic council, until the evil was past remedy. They complained sadly at that time, that the said tribunal extended its bounds to the prejudice of the chamber

which was erected with the approbation of the whole empire. But *Ferdinand I*, who finished *Maximilian's* work, and the succeeding emperors, too well understood their own interests, to give ear to those complaints. On the contrary, they endeavoured to convince the weaker states of the empire, who are the majority in number, that they would find both favour and support at the imperial court, by carrying their disputes thither; and this they did, on purpose to divert them from making a common cause with the others; and consequently, to break a sort of confederacy which they were not able to stand against. And herein they succeeded so well, that the authority of the aulic council is, at this time, publicly acknowledged by the fundamental laws of the empire.

XIV. After this succinct account of the origin and rise of the imperial chamber, and of the aulic council, I shall now draw a brief parallel betwixt them; to the end, that it may be discovered, with the glimpse of an eye, what conformity, and what difference there is, between these two tribunals; either with regard to the persons that compose them, or with regard to the regulations which they follow, or to the extent of their jurisdiction; or lastly, to the manner of publishing and executing their sentences.

Accord-



According to a regulation made by the treaty of *Osnabrug*, Art. V. Sect. 53, the imperial chamber ought to consist of a chief, who is called, by way of eminence, the *judge of the chamber*, because he represents the person of the emperor, four presidents, and fifty assessors. The emperor ought to nominate the judge, and the four presidents, two of whom are to be of the *Roman catholic* religion, and two of the *Augsbourg* confession. The assessors are presented to the chamber by the emperor, the electors, and the circles; in such manner, that the catholics present twenty six of their religion, and the protestants twenty four of theirs. The said treaty likewise shews the manner how this number is to be formed. But the difficulty which has occurred hitherto, in filling up this number, was the reason, that, by the resolutions of the dyet in 1719, the number was reduced to one half. There are actually, at this time, two presidents, one a *Roman catholic*, and the other a protestant; but the number of twenty-five, to which the assessors was reduced, is very far from being compleat. The assessors are presented, as I said, to the chamber; because it is necessary, that their capacity should be there examined, and approved of, before they can take their seats on the bench.

The

The aulic council, according to the regulation of *Ferdinand III*, ought to be composed of a president, who represents his imperial majesty, as the real head of this council, a vice-president, and seventeen assessors, by the name of aulic counsellors. Their creation depends only on the emperor, who also provides for their salaries; whereas the whole empire contributes to the maintenance of those that are of the imperial chamber. The judges of the aulic council were all heretofore of the *Roman* catholic religion: But, as the protestants urged this for a grievance, at the congress for the treaty of *Osnabrug*, by reason of the partiality which they had often experienced, on the part of those judges, in their processes against the *Roman* catholics, it was inserted in the said treaty, "That the emperor should add to the aulic council a certain number of counsellors, who were of the *Augsbourg* confession; to the end, that, in the processes between the catholics and the protestants, there might be an equal number of judges of the two religions." In conformity to this article, the emperor *Ferdinand III* declared, in the new regulation which he prescribed to the aulic council, that there should be, for the future, six counsellors of the confession of *Augsbourg*. In the following chapter we shall

shall mention the representations that were made, concerning this small number, on the part of the protestants.

The vice-chancellor may be also looked upon as a constituent part of the aulic council, because he has a right to take place in it; and because he has the dispatch of all the orders and decrees, which are issued from the chancery of the empire, at the imperial court, as well as of the pardons granted by the emperor, by signing, or counter-signing them, and thereto affixing the seals of the empire, which are in his keeping.

He is called vice-chancellor, because, in some measure, he supplies the place of great chancellor of the empire, by whom he is appointed. The emperor has the right of confirming him in his office, but he cannot set aside the person presented to him by the great chancellor, without reasons of the last importance.

XV. The emperor is agreed with the electors, princes, and states of the empire, as to the regulations which the imperial chamber ought to conform to, in its proceedings. The last of these was in the year 1555. There was a necessity for making another, for the sake of inserting in it the alterations that



that were made, with regard to that which I am speaking of, by the treaty of *Osnabrug*, by posterior resolutions of the dyet, by the vacations of the said chamber, and by customs tacitly approved. A draught of one was made, and though it has not been yet brought to perfection, nor directly confirmed by a resolve of the dyet; yet it has received a tacit assent, which gives it very great force.

Art. 5.

On the contrary, the regulations of the aulic council flow from the emperor's mere will and pleasure. The states of the empire were desirous indeed, "that, in conformity to the treaty of *Osnabrug*, the aulic council would follow the same regulations as the imperial chamber;" or, that the particular regulation, which the emperor *Ferdinand III* prescribed to the aulic council in 1654, might be submitted to the examination and approbation of the dyet. But the emperors, to whom representations were afterwards made upon this head, only contented themselves with reforming some of it's minute articles; so that all that could possibly be done, was to require of them, in the capitulation, "that they would take care to see this regulation of the aulic council observed; and, that they would redress the contraventions to it." I know not whether this precaution, taken in order to diminish

minish the number of the abuses committed by the aulic council, can be fairly deemed for a tacit approbation of the said regulation, which some pretend it to be.

XVI. All causes that are cognizable by the imperial chamber, may also be brought before the aulic council, except such as relate to persons appertaining to the said chamber, of which the former is the only competent judge. There are, on the other hand, many causes, and even some of the greatest importance, which are only cognizable by the aulic council. Such are in general all those that have any connexion with the *reserved rights* of the emperor, and that relate to the *immediate fiefs of the empire*, the succession whereof is litigated; if so be, that what has been hitherto the practice, with regard to the latter causes, can be any rule to the prejudice of what was the custom heretofore. For, at that time, the emperor judged those causes in an extraordinary court, which he formed with some of the princes, and which was called in the German language *Fürsten-Rath*. But this rule is observed after all, with regard to causes which are cognizable by the imperial chamber of the aulic council: "That  
 " either of the two tribunals, to which one  
 " of the parties first has recourse, and which  
 " does thereupon exercise an act of it's jurisdiction,"

diction, is thereby so fairly possessed of the cause, that it cannot be from thence removed. The said tribunals have this also in common, that the causes which are qualified to be brought before them, go thither, either immediately, or by appeal. In the number of the first, are the processes between the states of the empire, or which should be entered against them by a private person. To the second class belong the causes of the subjects of those states, who are left at their liberty, in certain cases, and under certain restrictions, to have recourse to the sovereign tribunals of the empire, by appealing from the sentence which has been passed against them, at their master's tribunal, and even there to seek for relief against the abuses of his government, as we shall in the sequel make more plainly appear.

XVII. By saying that the processes between the states of the empire, or such as shall be entered against them by a private person, whether a foreigner, or one of their own subjects, are immediately referable to the tribunals of the empire, I must not omit to observe, that this ought to be done, without prejudice to that first law-suit, which is called, in the empire, *Forum austregarum*. By this is to be understood a sort of proceeding before arbitrators, which derives its origin



origin from ancient conventions made by some families, during the great disturbances of the empire, for accommodating their differences in an amicable manner. The parties are obliged, at this day, to act according to those ancient conventions; wherever they are still subsisting; and where they are not, the public regulations provide the remedy. The point, which I have in view, does not demand, that I should explain the different methods which are proposed upon this head, by the ordinances of the imperial chamber; but it will not be impertinent to make mention of those wherein the persons at variance demand, that the emperor should grant them commissioners to regulate litigation, and that in those cases where one of the parties happens to be of the romish religion, and the other of the protestant religion, the commissioners should be an equal number of both religions.

This first reference of the states of the empire commonly serves for nothing but to prolong the suits, if the parties are not sincerely inclined to an accommodation. For, on the one hand, the sentence of the arbitrators does not hinder the parties from carrying their cause to the tribunals of the empire; and on the other hand, it is not agreed in what manner those sentences are to be executed.

XVIII. There

XVIII. There is no appeal, properly speaking, from the sentences of the imperial chamber, and the aulic council; but it is allowable to petition those tribunals, for amending them, by what is called, at the imperial chamber, a *revision*. This remedy is, when the party who desires to have recourse to it, from a sentence pronounced against it, requires the elector of *Mentz*, or the elector of *Triers*, in case the former should be interested in the process in question, that his cause may be re-examined in the city which happens to be the seat of the imperial chamber, by the members of the empire on whom the charge of such revisions is incumbent, according to the public constitutions, which formerly settled the course of them for every year.

This recourse to the revision suspended the execution of the sentence heretofore, and was of wonderful service for prolonging the suits of law. But as this suspending power has since been taken away; and as, besides, there are no longer any ordinary and annual visitors, the recourse of this kind is thereby become less frequent. The person, however, to whom the revision is granted may demand, that the sentence of execution be not awarded in favour of the adverse party, until he has  
given

given sufficient security to indemnify him, if he gain his cause before the revisors.

He, who is condemned before the aulic council, may likewise apply for a revision of his process, by a petition to his imperial majesty. And such revision must be committed to the care of such of the aulic counsellors as had no hand in the sentence from which recourse is had to it; or, as at least were not the reporters of the cause. It ought to be with this remedy, as with that of the revision at the imperial chamber, in imitation of which it was introduced into the aulic council. But, forasmuch as this council is not inclinable to copy after the said chamber, in every respect, it takes upon itself, either to take off the suspending power from this remedy, or to let it remain just as it thinks fit.

J. P. O.  
Art. 5.

There is also room for recourse to be had, in a law-suit, to the dyet: not for amendment of the sentence, but by way of complaint against the judges, for infringing the constitutions of the empire in such suits; but of this a fuller account will be given, when we come to consider the matters that are to be treated of at the dyet.



XIX. The last *Recessus imperii* of anno 1654 says, that the imperial chamber ought to be visited every year, by some of the deputies of the empire, under the direction of the elector of *Mentz*; for the reformation of the abuses that were crept into it. This wholesome regulation is now disused; those visits are reserved only for extraordinary and important cases, which demand redress; and then a deputation is formed, consisting of some members of each college of the states of the empire, and of an equal number of the two religions.

D. L.

The elector of *Mentz* is charged by the treaty of *Osnabrug*, to visit the aulic council, in like manner, and to observe in this respect, what shall be thought necessary to observe, by the common consent of the states, in the next dyet. In the succeeding chapter we shall take notice of the reasons why this visit has not yet been established.

XX. Every thing is transacted at the imperial chamber, as well as at the aulic council, in the name of the emperor; and it is the emperor who takes care that the mandates and decrees, issued from those tribunals, be put in execution. But, as several examples made it apparent, that it would be dangerous

dangerous to prescribe no rule to him in those executions, it was agreed, that the director, or duke of the circle in which they are to be made, should be charged therewith; provided nevertheless, that neither the one nor the other had any interest in it: for, otherwise, the execution of the arret was to be committed to the neighbouring circle. Several circles are sometimes charged jointly with the execution of an affair, when one alone would not be sufficient to go through it. The restriction of the emperor's prerogative, with regard to the executions that are to be made in his name, and in that of the empire, has often disgusted the imperial court. But by the mortification it received from the directors of the circle of *Lower Saxony*, upon account of a decree of the aulic council, which it caused to be put in execution, by it's plenipotentiary for the circle, in favour of the duke of *Mecklenberg-Swerin*, the court was convinced how cautious it need to be of undertaking any thing against the right of those who are strong enough to maintain the possession of it.

After all, the imperial chamber continues it's session during the vacancy of the empire; and dispatches it's sentences and decrees, in the name of the two vicars, as has been above observed, whereas, on

the death of an emperor, the aulic council ceases to act.

### CHAP. XIII.

*Of the great advantages which the emperor gains by the aulic council; and of the abuses that prevail in it.*

I. **A**S it may be seen by the parallel which we have been making between the imperial chamber and the aulic council, that the emperors have carried matters so far, with regard to the latter, as to make it almost independent on the body of the empire; it will not be surprising if we now find, that the states of the empire in general, and the body of the protestants in particular, have upon divers occasions complained very bitterly, of the grievances arising from this pretended independency, as a thing which is contrary to the present constitution of the *Germanic Body*, and prejudicial to the liberty of it's members. I thought it was necessary to relate these grievances in this work, wherein I represent the different members of this great body as so many sovereigns linked together under one and the same head. For the frequent proceedings of the aulic



aulic council against them, would not be compatible with the idea which I have given of their sovereignty, if such proceedings were acknowledged to be legal. But to guard my remarks on this head against all manner of criticism, I shall take them from the very memorials which have been presented to the imperial court; and from a work published by an author,\* who was for a long time the minister of a great prince of the dyet.

II. One of the grievances which affects the whole empire in general is, that the aulic council is often stopped in it's proceedings, and in it's arrets, by the emperor's council of state, to which it is obliged, in cases of any importance, to communicate it's resolutions, before they are published. It seems indeed, at first view, that it may be for the interest of the empire, that in certain circumstances where commotions are to be apprehended from the decision of a cause, and from the measures necessary to be taken for the execution of a sentence, the emperor should examine in his council of state, if it is not convenient to have the decrees of the aulic council

L 3

cil

\* This author is the late *M. Henniges*, privy-counsellor to the king of *Prussia*, and his second ambassador at the dyet of the election, where he died in 1711. His anonymous tract is intituled, *Meditationes ad J. P. Osnabrugensis*.

Art. 5.

ell suspended, or in some sort restrained; the  
 rather, because the treaty of *Osnabrug* itself  
 makes mention of these cases, and 'leaves his  
 imperial majesty at liberty, to desire the ad-  
 vice and suffrage of some of the electors  
 and princes of both religions upon that head.'  
 But it is easy to perceive the difference there  
 is between what the emperor may do in con-  
 cert with those princes, and the resolution  
 which he takes in his council of state with  
 his ministers; in which council it is pretend-  
 ed, by such as make a grievance of this method  
 of acting, that it is not so much considered  
 what the tranquillity and welfare of the em-  
 pire would demand, in certain conjunctures,  
 as what is agreeable to the particular interests  
 of the emperor. It must also be remarked,  
 that what was left to the emperor's discretion,  
 by the treaty of *Osnabrug*, in the cases in  
 question, was prescribed to him afterwards  
 in the capitulation, as a precaution which he  
 ought necessarily to observe, in all resolu-  
 tions which might occasion disturbances  
 and trouble in the empire. As for all other  
 cases, the said capitulation adds, expressly,  
 that the emperor shall not permit his coun-  
 sellors and ministers, by what name soever  
 they are called, to interfere, either jointly or  
 separately, in the affairs of the empire, that  
 appertain to the aulic council; or to give  
 any hindrance to it's mandates and decrees.

Art. 3. &  
II.

Art. 16.

III. Ano-

III. Another grievance, which also affects the members of the empire in general, arises from the liberty which the aulic council assumes, of interpreting, by it's single authority, the dubious sense of a public law contrary to the very nature of the laws in general, which require, that the right of interpreting them decisively be left to those who made them, and contrary to the manifest tenor of the treaty of *Osnabruck*, and of the capitulation which refers such interpretation to a general dyet of the empire.

J. P. Art.

5.

Capit.

Art. 2.

IV. To these principal grievances which affect the whole empire, I shall add some instances of others that affect all the protestants in particular. They complain, that in the aulic council there are but six counsellors of the *Augsbourg* confession; and they say, it is impossible that so small a number, supposing that they were always all present, should be able to counter-balance the number of the catholic counsellors, which is more than double. It is true indeed, that the regulation of the aulic council, in which this number is fixed, has thought fit to remedy this inconvenience in some measure, by enacting, that in cases where the aulic counsellors were so divided in their suffrages, that all the protestants went one way, and



“all the catholics another, the votes should be reckoned equal.” But the author whom I have quoted does not think that this case ever yet happened, and affirms, that he met with no token of it in the archives of the dyet, to which a case of this nature ought to have been referred, according to the tenor of the treaty of *Osnabrug*; from whence he infers, that, in the choice of so small a number of aulic counsellors, measures are so well concerted, that there are always some of them who sacrifice the interest of the religion which they profess to particular views, so that it is never possible for them all to embrace an opinion contrary to that of the *Roman* catholic counsellors, and that they should all of them persist in it. The solidity of this conjecture can admit of no manner of doubt, when it is considered how many there have actually been of those false brethren who have embraced the *Roman* catholic religion to attain by that step to the office of president, or vice-president of the aulic council, or to other posts of equal distinction.

V. The protestants complain also, that the aulic council, in appointing of commissioners to decide the differences between the catholics and protestants, often forget the equality which there ought to be in the choice

choice of the commissioners with respect to religion, by associating some catholic commissioners to the protestant, who, for reasons founded on his own interest, is under a necessity of humouring his particular associate, or the catholic party in general, and who is therefore not in a condition to support an opinion with steadiness if he thought it ever so just.

It is plain enough, from these grievances, what a necessity there is for visiting and reforming the aulic council, from time to time, according to the united wishes both of the catholics and protestants, specified in the treaty of *Osnabrug*; and again more particularly, in the last capitulation. But such is the unhappy consequence of the difference of religion, among the members of the empire, that they could never yet come to an understanding with the elector of *Mentz*, concerning the preliminaries of such a visit; and that the catholic party, whose complaints against the aulic council are not so considerable as those of the protestants, have chose hitherto to suffer in some things themselves, than to concur with the latter, for the redress of all the wrongs which I have recapitulated. Perhaps also, the *Roman* catholics, by not making theirs a common cause with the members who are not of their religion, expect

pect the better treatment, in cases wherein the protestants daily experience the pernicious effect of those wrongs of which they have for so long time been suing for a redress. From hence it is, that the latter have already found themselves under a necessity of publicly disallowing the jurisdiction of the aulic council, in their causes: And it would be a hard case that they should be again compelled to it; and that the imperial court should give them the trouble of obtaining that by vigorous resolutions which it ought to grant of its own accord, in regard to the treaties and constitutions on which the demands of the protestant states are founded, and according to the engagements which the emperors enter into for observing those constitutions, and for redressing past contraventions.

Art. 16.

The article of the capitulation of the emperor Charles VI, which treats of the aulic council, is very long, and plainly shews the desires of the emperor in this point. Perhaps we are now entering on the happy moment when things may be at length put on a better foot by the zeal and wisdom of the electors, who have now a new choice to make, and who are, with regard to this matter, in the most favourable situation.

VII. The thing which renders the redress of



of the grievances that I have just now mentioned, still more important, and more necessary, is, that the emperor employs the aulic council in the decision of the controversies that turn upon the immediate fiefs of the emperor, the cognizance of which, as we have already remarked, was reserved to himself. I do not care to dispute the matter with those who argue, that what has been observed with regard to such cases since the reign of *Maximilian I.* the founder of the aulic council, could not form a tacit law; and that they who have been pleased to submit the decision of those controversies to the said tribunal, could not oblige others to take the same step, who claimed that the emperor himself should be the judge of their differences, in conjunction with some of the princes, as was the ancient practice. But will it be so easy a matter to turn the aulic council out of so long a possession, whether well or ill founded, and would it not be more convenient to take care, that, whilst it makes use of the right which it assumes, it may not have it absolutely in its power to accommodate its sentences to political views, which may be directly opposite to the welfare and liberty of the *Germanic body*?

VIII. It is said that cardinal *Clesel*, who was first minister to the emperor *Matthias*,  
Tomas not.  
ad Monz.  
cap. v. §.  
declared, 21.

declared, that his master had no need to employ forces for humbling the states of the empire, inasmuch as the single authority which the aulic council gave him, was sufficient to keep them all in a dependency on him. I will not vouch for the truth of this anecdote; but whoever gives the least attention to what passes in the proceedings upon the causes which I have been relating, and the variety of the decrees and arrets which the aulic council passes upon this occasion, will soon be convinced that it does not always weigh them in the balance of justice strictly impartial, and that the favour or hatred of the judges is therein but too often manifest.

IX. While things are on this foot, no wonder that we daily find princes who think themselves strong enough to support their pretensions by their own power, having recourse to their strength against those with whom they have any dispute, and endeavouring to make an immediate seizure of the litigated countries, as thinking it would not be prudent for them to abandon their good title to judges of whom they have a suspicion, and, after a hundred years suit perhaps, to expose themselves to the loss of a cause to which they think they have a very good right. The constitutions of the empire, it is true,

true, forbid these acts of violence, but they suppose, at the same time, that justice will be duly administered by the tribunal of the empire.

## C H A P. XIV.

*Of the right which is in the subjects of the empire to have recourse in some cases to the tribunals of the empire, as well by way of appeal from a sentence passed against them in their sovereign's tribunal, as upon account of any grievance suffered by his government.*

I. **T**H E obligation of the states of the empire to refer the decision of their differences among themselves to the tribunals I have been treating of, is not at all repugnant to the nature of a compounded State; nor does it, of itself, in the least infringe the sovereignty of those who are a part of that body, when they themselves are agreed in keeping the peace with one another by this means, and when the tribunals, which they have established, are composed of judges of their own chusing, and such who in their judicature keep up to the regulations which have been prescribed to them by



by the common consent of the members of the confederacy. But it seems incompatible with the nature of the sovereignty, of which the members of a compound state never divest themselves, that their subjects should at the same time repair to the tribunals of the empire, by way of appeal from a sentence passed against them in the tribunal of their own particular sovereign. It will therefore be here necessary to explain the reasons of this privilege, and at the same time to shew why the subjects of the electors, the archdukes of *Austria*, and the dukes of *Saxony*, do not enjoy this right any more than the subjects of the provinces which *Sweden* acquired by the peace of *Westphalia*.

II. For the better understanding of these two articles, it is necessary to recollect what was said in the twelfth chapter, of the method in which justice was exercised in the empire before it had assumed its present form. The right of jurisdiction resided at that time originally in the king, and it was in his name only, that it was exercised by the count *Palatine* and the inferior judges; by the former at the king's court, and by the latter in the provinces. But at the same place I also observed how the principal dukes of the empire took advantage from their own power, and from the decay of the imperial authority,

city, to erect new tribunals in their own dominions with the consent of their subjects, who rather chose to have their causes tried by judges to whose establishment the states of their own country had concurred, than to dance after the imperial court, which was at that time itinerant, and often very much perplexed how to put its sentences in force by reason of the civil wars.

III. Admitting these to be facts, it is plain that the prerogative of the electors which hinders the subjects of the electoral territories from appealing from the tribunals of their masters, is not, with regard to the secular electors, a privilege that was granted to them by the *golden bull*, but is, on the contrary, very antecedent to that constitution; and it can only be looked upon as a concession, or a privilege granted with regard to the ecclesiastical electors, and with regard to such as are admitted at this day into the electoral college. The ecclesiastic electors have only enjoyed the prerogative I am speaking of since the *golden bull*; and even some of these did not make use of it till a long time after, tho' the said law speaks of it with respect to them, as a custom immemorial. The crown of Sweden enjoys this prerogative in the provinces which it possesses in the empire, by virtue of that very peace by

Ludewig  
ad A. B.

which those provinces were yielded to it. The right of the archdukes of *Austria*, and of the dukes of *Saxony*, is founded upon privileges, but on such privileges as their subjects did not oppose, and by which the emperors probably only confirmed what was already admitted and practised.

IV. It appears also, that the restraining of the jurisdiction of the other princes and states, whose subjects may also appeal to the tribunal, is not so much a sign that the jurisdiction of their country depends actually on that of the emperor, which would not suit very well with their sovereignty, as it is the remnant of that liberty which the subjects I have mentioned have preserved, since the ancient system of the *Germanic* government. This opinion is founded on what the *recessus imperij* of the year 1654 hints upon this subject, and on what the capitulation of the emperor *Charles VI.* repeats of it in the eighteenth article, where it says, "that  
 " his imperial majesty ought not to grant  
 " privileges which are prejudicial to the jurisdiction of the sovereign tribunals of the  
 " empire, or to the right of *private persons*." To this may be added what a celebrated historian reports of *Frederic-Wil-*  
*liam*, the elector of *Brandenbourg*. This prince wished that his subjects in the provinces

*Puffend.*

R. B. xix.

1.



vinces, which he had acquired by the peace of *Westphalia*, might no longer have recourse to the tribunals of the empire, and that in this respect they might not be in a better condition than the subjects of his electoral territories. But he was given to understand at the court of *Vienna*, whose favour he solicited in this affair, that his imperial majesty could not act against the ancient privileges of the states of those provinces, and that the elector had best prevail on them to renounce them of their own accord, by recommending his own tribunals to them by a fair administration of justice.

V. But there are certain causes which cannot be removed from any tribunal to those of the empire, *viz.* ecclesiastical causes, in which are also included causes matrimonial and criminal. The former of these cannot be carried to the imperial chamber, nor to the aulic council, because, according to the system of the *Roman* catholics, they appertain to the cognisance of the ecclesiastical courts, and because the protestants do not think themselves obliged to grant to the tribunals of the empire, what is denied them by the catholics. And, as for criminal causes, they do not allow of any appeal, because, if it were admitted, the states of the empire would run the hazard of losing their right to

M

inflict

inflict punishment on those who were guilty of crimes and misdemeanors, and be disabled, perhaps, from maintaining the public security in their provinces.

VI. If the liberty of having recourse to the tribunals of the empire, which the subjects of some princes of that body still enjoy, and which the subjects of the electors may also make use of, when they have occasion to complain of a denial of justice; if, I say, this liberty is very proper to shelter them from the injustice which they would be apprehensive of in some cases, it is still of more importance for all the subjects of the electors, princes, and states of the empire in general, that, by virtue of their *mediate* dependence on the whole *Germanic* body, they may have recourse to the protection of the emperor and empire, when they have too much to suffer from the government of their respective sovereigns. This permission, which is granted them by the laws of the empire, is another remnant of their ancient state, when they considered themselves not so much as the subjects of him who governed the provinces in which they lived, as subjects of the emperor, inasmuch as he was head of the empire. The sovereignty, to which their masters have attained insensibly, has indeed diminished the allegiance of their subjects

to

to the emperor, but not intirely dissolved it: and one proof that they are still regarded as mediate subjects of the empire, is, that they become guilty of high treason when they are in any schemes, or enter into any engagements against the emperor and empire. It results also from this mediate subjection, that the emperor has a right to recall, by public edicts, those who serve in the army of any foreign prince who is a declared enemy of the empire, and to disengage the subjects of the states of the empire, who are in the same circumstance, from their oath of fidelity. It was just therefore that the emperor should also engage to take them into his protection, as he naturally does in his capitulation. And, Art. 15<sup>th</sup> forasmuch as this protection only tends to hinder the states of the empire from violating those obligations to their subjects which the very nature of all civil society, and particular conventions prescribe to them, it cannot be deemed as opposing their sovereignty, unless it could be proved that sovereignty demands that the person, who is possessed of it, should have the liberty of treating subjects as slaves, and that he should be exempt from all manner of engagements to them.

VII. It was necessary, however, that the states of the empire should take care, on their



Capit. of  
Char. VI.  
art. 15.

on their part, that the imperial court did not disturb their government, under the pretence of an inclination to protect their subjects against an unjust oppressor. The emperor is therefore obliged to promise in his capitulation, "that, instead of too readily giving ear to the complaints of the said subjects, he shall refer them, on the contrary, to their master, and exhort them to obey him; and that he shall take the necessary informations from the subjects, before he makes any decree against them. The states of the empire reserve to themselves the liberty of suppressing with their own force, and with the assistance of their neighbours, all insurrections of their subjects against their just authority. The nineteenth article of the said capitulation adds also, that the emperor shall make no decree upon the mere complaints of subjects against their master, especially when those complaints are levelled at the rights of territorial superiority, particularly against the right of raising contributions, and against the right of arming, and of putting countries in a proper state of defence, &c. But that he shall refer them to the *Austregues* or arbitrators already mentioned, as the first reference of the states of the empire; that even when such recourse had by the subjects is well grounded, the

" emperor

“ emperor shall make no decree against their  
 “ masters, till he has heard the said masters,  
 “ otherwise it shall be free for those against  
 “ whom he has granted any decree or man-  
 “ date to pay no regard to it: and finally,  
 “ that he exhort the subjects not to depart  
 “ from their obedience to their masters, as  
 “ long as the process is depending.”

VIII. But when it is considered, how dif-  
 ficult it is to judge of the justice or injustice  
 of the complaints which subjects may form  
 against their sovereigns, and how easy it is,  
 on the contrary, to give some colour to op-  
 pressions, as well as to rebellions, it will ea-  
 sily be understood what advantages the im-  
 perial court may derive from its right to un-  
 dertake the defence of the subjects of the  
 states of the empire, when it is for the con-  
 veniency of that court, thereby to promote  
 it's present interest. How often has it not been  
 observed, by the variation of its conduct in  
 the same cause, that it was not equity nor jus-  
 tice, but it's own conveniency and policy that  
 regulated it's decrees and it's proceedings?  
 It is true, that the weak only are those who  
 commonly feel the weight of this authority  
 and this prerogative of the emperor's, or else  
 they whose rights of sovereignty are limited  
 by the privileges of the states of the country.  
 But even the most powerful ought not to de-  
 pend

# *The* GOVERNMENT *of the*

pend so much on their own strength, as to think they can with impunity despise the emperor's authority in their disputes with their subjects. It is true, that the latter dare not be too forward in courting the support of the emperor against their master, for fear of making their condition worse; but circumstances may happen which may embolden those who were before afraid of lifting up their heads; and there are some instances when the imperial court, disgusted with the conduct of a prince of the first rank, has satisfied his subjects, in whom it has observed some seeds of alienation from him, that they should be sure of its support.

## CHAP. XV.

*An examination of the emperor's reserved rights in general, and of the advantages which he derives in particular from the prerogative of conferring titles and dignities.*

**T**HE members of the *Germanic Body*, having thought it was their interest to keep one common head to cement their union, and to give vigour to their common

resolu-



resolutions, thought fit not only to invest him with all the prerogatives necessary for that end, but also to grant him all such distinctions as might qualify him to represent the majesty of the empire with the greater splendor: at the same time they gave him up the exercise of certain rights of sovereignty, for which the concurrence of all the members of that body was not necessary, and which, if kept within their bounds, could not prejudice their particular sovereignty. Therefore, in the examination of the prerogatives of the emperor, a difference must be made between the rights whereby he is distinguished in the government of the empire barely as the head of the members who share it with him, and between the rights which he exercises without their concurrence, and which are in a proper sense called his *reserved rights*. The first class comprehends the prerogatives that belong to him in the administration of justice, which have been already mentioned, and those which are due to him at the dyet, which we shall consider presently. What is immediately to be enquired into, is the nature of the rights which are properly called the emperors *reserved rights*, and their consistence with the sovereignty of the members of the empire to which those *rights* seem at first view to be opposite: for the emperor exercises some of them towards the very

persons of the members of the empire, and others with regard to their country and their subjects.

II. The reserved rights, which the emperor exercises towards the members of the empire, consist, 1. In his granting all of them the investiture of the dominions which they possess by the title of fiefs, and of which we have already explained the nature. 2. In his conferring titles and privileges on them. 3. In his granting them a dispensation of age to enable them the sooner to take the reins of government into their own hands. 4. In his deciding such disputes as may arise between them about precedency. 5. And lastly, In his having a right to dispose of a vacant place for some time only, in every chapter of the empire. This is called the right of *præsumptio*. The court of Rome, not content with having deprived the emperors of the right they formerly had to create bishops, still looked with an envious eye upon the poor remains of this fine flower of their crown and was not ashamed to demand that the emperor should exercise the *præsumptio* by virtue of bulls which the popes had the complaisance to grant him for that purpose. But the treaty of *Worms* clearly shews that the emperor has no need of those bulls, and that he ought to enjoy the prerogative I am treating

treating of without dispute, not only in all chapters that depend immediately on the empire, but also in those which depend on it mediately, and of which right it was possessed in the year 1624. All the reserved rights, which I have just now enumerated, contain nothing in themselves, but what the states of the empire might have granted to his imperial majesty, without prejudice of their concurrence in matters essential to the general government of the empire. Besides, care has been taken, in the public constitutions, to prevent, as far as possible, all abuses which an emperor might make of those rights. I have already observed, that the capitulation deprived the emperors of the means of forming difficulties, as to the investitures which may be demanded by the states of the empire; and I will now mention the restrictions that have been put upon the reserved rights of the empire, in order to ward off every inconvenience.

III. As to the right, therefore, of granting new titles to any of the members of the empire, and of creating, for instance, princes, counts, &c. a distinction ought to be made, in the first place, between the bare title, and the rank belonging to it, and the right of sitting in the dyet, by virtue of such new title. The constitutions of the empire make a wide difference be-

tween



tween these two cases, and lay great restrictions on both the one and the other. They require indeed, that the emperor should raise a person to the dignity of prince, or count; and that he, who has obtained this title, be acknowledged as such throughout the whole empire; but the emperor expressly engages himself in his capitulation, "That he will only confer those

Art. 22.

honours on such as deserve them, such as possess estates in the empire, and such as are able to support their new rank with "dignity." And, forasmuch as the second case, wherein those princes and counts might challenge a place among the states in the dyet, is of infinitely more importance, the precautions which the constitutions of the em-

Art. 1.

pire have taken in this respect, are carried much farther still. They require in the first place, "That the person, who aspires to this advantage, be possessed of a principality or county, immediately holden of the empire; and that he be included in the matricula of some circle, for the quota of his contributions." They require moreover, that not only the electors, but also the college of the princes, in which, he who is made a prince or count is to take place, do give their consent to his admission."

IV, The first of these conditions was actually sufficient to hinder an emperor from making

making an ill use of this reserved right, which we are now examining; because there is no room to fear, that he should be inclined to divest himself of any one of the principalities or counties which he possesses in the empire, in favour of the person that he should have a mind to introduce into the college of princes. But to this may be added, that, as it is not in his power to dispose of fiefs of this nature without the consent of the states of the empire, as has been said above; it would be very difficult, not to say impossible, for him to favour his creatures, by conferring fiefs on them, that should happen to become vacant; especially, if it be also considered, that the number of princes, with which every family in *Germany* abounds, is so great; and that they have provided so well for the succession to their dominions, by ancient pacts of confraternity, confirmed by the emperors, that it can scarce happen that any one family should become extinct; or, that such extinction should make any claim, by which an emperor can be the gainer. The conduct of the emperor *Ferdinand II.* and some of his successors, who filled the chamber of the princes with their own creatures, for the sake of gaining a majority in it, is a sufficient proof of the wisdom of the precautions which have been taken since that time; and the princes of ancient families, of

as

as high birth as the electors themselves, would not have been confounded together with those princes of a modern creation, if a way had been sooner found out to hinder their multiplication.

V. The augmentation of the number of the electors being still of much greater importance than that of the princes and counts, it is easy to perceive, that it ought not to depend on the mere will and pleasure of the emperor; because it concerns not only the whole body of electors, but that of the princes, and the other states of the empire, equally as much, and even more. Nothing is a better proof of this, than the fact there was among the latter, on account of the advancement of the *Hanover* family to the electoral dignity, when, without casting any blemish upon the ancient splendor, and known merit of the princes of that house, they were for hindering its accession to the body of the electors; for fear only, lest it should give the electoral college too great an ascendant over the college of princes. It had been remarked indeed, in the reigns of some of the emperors, and particularly that of *Ferdinand II.*, that the imperial court chose rather to share the government of the *Germanic Body* with the electors alone, than with all the states of the empire together; which was



was the reason that general dyets were then very rare, that emperor contenting himself with assembling the electors in cases of consequence; and, if they did join any princes to their body, they were only such as he was sure of, or such as it was of importance to him to cultivate their credit and affection.

VI. This proceeding of the emperors was the principal cause, why the princes of the empire, supported by *France* and *Sweden*, whose interests were, in this respect, common with their own, did all they possibly could, at the congress of *Brunswic*, that the power of the emperors might be confined to its ancient bounds; so that they might no longer be able to undertake any thing, in affairs which concerned the common weal of the empire, without laying them before the dyet, and demanding the consent and approbation of the whole body for that purpose. They happily gained their point, as may be seen by the eighth article of the said treaty, which serves as a new basis to the most ancient rights of the *Germanic Body*, and which we have above quoted at full length. The princes therefore, thinking that the increase of the number of the electors was what struck at the very foundation of the government of the empire, for the reasons that I just now mentioned, not only made a strong alliance between

Art. 17.

tween themselves, to guard against the danger they were threatened with, but had recourse also to the crowns of *France* and *Sweden*, by virtue of an express article in the treaty of *Osabrug*, which required, that all those who were the contracting parties in it, should likewise be it's guarantees. This, which was so crabb'd an affair, and so likely to set the empire in a flame, was at last happily concluded to the general satisfaction. The new electoral dignity, in the house of *Hanover*, has been acknowledged by the whole empire, and the princes, content with the assurances that were given them that the emperor would not take such another step, were so very complaisant as to consent that the emperor himself should sit at the dyet, in the college of the electors, as king of *Bohemia*. This change may, in some respects, be deemed as another increase of the number of the electors, because his quality of king of *Bohemia* only gave him, before, the right of a suffrage for the election of an emperor.

VII. I do not reckon the prerogative of creating kings, among the reserved rights of the emperor, as some do. It is true indeed, that it was by a grant from the emperors, that the kings of *Poland* and *Bohemia* first bore that title, and that heretofore, the chris-

tian princes voluntarily acknowledged, for their king, him to whom the temporal head of *Christendom* had done that honour. But, as I before observed, that the emperor is no longer regarded in this light, and that he has retained no other advantages over crowned heads, than that of precedence, it is necessary now, that a prince, who would take the title of king, should make his resolution acceptable not only to the emperor, but to the other powers also. If, in the mean time, a member of the empire be ambitious of this advancement, as sovereign of a country not dependent on it, it would be but natural and agreeable to his views, for him to make it his chief study to bring the imperial court into them, by reason of it's connection with the *Germanic Body*, and thereby the better to incline all the members that compose it, to follow the example of their head in this matter. And, by doing this, the members need not to fear the loss of any of the advantages which they had over the new king, before his exaltation; because, in all affairs which relate to the government of the empire, he is not looked upon as king, but as a member of that body. What happened about the beginning of the last century, with regard to the elector of *Brandenbourg*, on his assuming the title of king of *Prussia*, agrees perfectly with what we just now remarked.



VIII. I have but one single observation to make, upon the right of the emperor to grant to the princes of the empire privileges, and a dispensation of age; and this is, that, when he grants them, he ought not to do any thing contrary to the fundamental right of a third person, as would be that of the guardianship of a minor elector, which the *golden bull* commits to his nearest kinsman in the male line. For, if he gave to such minor a dispensation of age, he would deprive his kinsman of the advantages which he derives from this guardianship.

IX. The decision of the disputes that may arise among the princes of the empire, about rank and precedence, either at the dyet, or elsewhere, is justly numbered also among the reserved rights of the emperor; but the *Recessus imperii* of 1545, sect. 15, requires, that he should endeavour to compose disputes of this sort, by amicable means, and in concert with the electors, princes, and states of the empire. The imperial court, on the other hand, is too prudent to take such a decision upon itself, not only, because it would make the person against whom it was pronounced it's enemy; and perhaps, expose it's own authority; but also, because it is better for the court to let such jealousies subsist among some of the great families, inas-  
much

much as they weaken their union, and favour the views of an emperor, upon occasions when he would be willing to take an advantage from their misunderstanding.

X. Proceed we now to the emperor's *reserved rights*, which relate to the countries and subjects of the states of the empire. Among these, the chief are the prerogatives of erecting universities, giving to a place the privilege of a city, establishing fairs, granting patents of nobility, and legitimacy, giving a dispensation for age, and rehabilitating in honour. All these rights appertain very naturally to the sovereign of a country, and the states of the empire actually exercise the greatest number of them. But when it is considered, that there are acts of sovereignty, which in their own nature have no force beyond the limits of a state; and that it is only for the sake of civility, and mutual convenience, that another sovereign respects them in his own country; it will easily be inferred, that acts, which ought to operate throughout the whole empire, can properly flow only from the whole body; and that therefore it was not contrary to the sovereignty of its members, that the dispatch of them should be left to the emperor. And supposing also, that, by a just complaisance, the members of the *Germanic Body* should

N

be

be inclinable to shew regard, each in his own country, for the acts of another's sovereignty; it would be even necessary, for those at least who are the weakest, that the empire should affix it's seal, as it were, to their decrees, in order to make them respected by foreign powers. This is the common fate of all petty states. There are some, whose sovereignty also is indisputable, that would not expose their honour by erecting for instance a university in their own dominions, or by granting patents of nobility, undeniable acts of the sovereignty which they possess. They would be afraid, that gentlemen of their creations or the degrees that should be conferred on the learned in their university, would not be acknowledged out of their territory.

XI. It appears from the foregoing remarks, that the reserved rights of the emperor are not in themselves an opposition to the sovereignty of those, in whose countries he exercises those rights; admitting, that he does not extend them beyond the mark for which they were left to him. And the states of the empire, those I mean who are not too small, are very careful to be on their guard against this, and to oppose whatever may start up, contrary to the welfare of their country. Several of them, for instance, will not own patents of nobility solicited by any of their subjects



subjects at the imperial court, till they have been examined and registered in their own chancery: and, by acknowledging the title of the person who has obtained such patents of honour from the emperor, they do not always grant him the privileges which are enjoyed by the nobility of their own country. They pay the same attention to the particular interest of their respective countries, with regard to all the other ~~reserved~~ rights of the emperor, especially when the persons, to whom the imperial court gives the title of counts *Palatine*, offer to exercise any of these rights in the name of his imperial majesty, by virtue of a diploma which they have received from him for that purpose.

XII. All these natural restrictions of the ~~reserved~~ rights of the emperor, and the cautions with which he ought in justice to use or exercise them, do not hinder his reaping very great advantages from them, especially from that which relates to the conferring of honours and dignities. There is no difficulty which the imperial court can be at a loss to surmount by prudent management, when the thing to be done is to put a member of the empire in actual possession of a new dignity, to which he has by its favour been advanced; by only gratifying, to this purpose, some particular and present interest of the persons who are to give their approbation to it.

When the court has attained to it's views, it by that means not only attaches to itself the party who has made use of it's credit, but brings over to it's side all those who aspire to the like favour. Suppose, however, that no member of the empire could be tempted by this bait, would their ministers, their favourites, their mistresses, and others who have credit at their court, look with the same indifference on the distinctions which the emperor is capable of procuring to them, and on the necessity they are under of his favour, to sooth their ambition; and would not their obligation to him for favours received sometimes induce them to connive at things for the service of their master? The misfortune would be yet greater, if the minister of a prince who resides at the imperial court, or at the dyet, where he ought to have a particular eye to the interests of his sovereign, and to the welfare of the *Germanic Body*, should put himself under a necessity, from the motive of vain-glory, to court the friendship of him who distributes those favours. It is indeed to be feared that the apprehension a man may be under of making himself an enemy, may sometimes hinder him from speaking with a courage becoming his ministry; that his eyes may be often dazzled by what passes at the imperial court; and that the reports which he shall make thereof to his master may favour a little

tle of corruption. They, who have had occasion to trace ever so little the steps of such as are employed at this court, have perhaps seen more examples than are necessary, to be convinced of the truth of these reflections.

XIII. The right of conferring honours and titles gives a great advantage also to the emperor, when the point is to decide the right of succession of the children of a prince or count of the empire, descended from an unequal match. It is a practice founded on the ancient laws and customs of *Germany*, that princes and the nobility ought to marry with persons of their own rank; and it often happens that such of them, as have married a woman of inferior rank, have applied to the imperial court, sometimes, that the person whom they married might be advanced to a rank suitable to their own; and, at other times, that the children born of such marriage might be in some sort legitimated. But there are also examples, on the other hand, where the children of those, whose father had neglected such precaution, have nevertheless been admitted to the succession of their dominions. It would be therefore a great question, into which I will not now enter, whether the ancient customs, which condemned such marriages heretofore as were

N 3

unequal,



unequal, do still subsist, and whether they are applicable to the present condition of the princes and counts of the empire. But, as for the advantage which the emperors may derive from this dubious question, it is sufficient that they, who have been for some time in this case, rather chuse to apply to the imperial court, that their wives may have some rank equal or proportioned to their own, than to expose their children to the hazard of objections that might possibly be made to their right of succession. For, in this state of things, the emperor has almost the power already of determining the fate of children descended from a disproportionate match, just as it shall please him to grant or refuse the favour of advancing their mother to a dignity suitable to that of her husband. Nevertheless, it were more natural that the woman, whom a prince marries, should derive her lustre from her marriage itself, than to borrow it from a patent, the validity of which is arbitrary, and which, at the same time that it puts her on a level with her husband, seems to derogate in some sort from the sovereignty of a person to whom she is by this means to be made equal. There is not that delicacy observed in other countries if the sovereign marries a subject, as is sometimes the case. If, in such matches, there are none of those defects which are contrary to the nature of such contracts

tracts in general, and of the marriage itself, in particular, that is sufficient to qualify the children descended from such marriages to ascend the throne. For the rest, I rather chuse to leave it to my reader to imagine what advantage the imperial court may gain from the practice that has been hitherto, than to produce any odious examples in proof of it.

## C H A P. XVI.

*Of the general dyets of the empire, and of the*

*deputations.*

**W**E are now come to that august assembly of all the members of the *Germanic Body*, wherein they deliberate together, and concur with their head, for whatever relates to the good of the public, and their common safety. They who have the right of being present in this assembly, which has the name of a *dyet*; are called the *States of the empire*. But the nature of the modern dyets is very different from the ancient ones. They who composed them heretofore, assisted in them, principally by virtue of the offices which they exercised in the different provinces of the empire under the supreme authority of the king, who assembled them as his own counsellors of state and those of the

empire, without whose consent the public constitutions would not allow him to undertake any affair of importance. Those, that are now called the *States of the empire*, assemble in the dyet by virtue of the *territorial superiority*, essentially equal to sovereignty, which they enjoy in the countries that are a part of the empire; and consequently by virtue of the same right, whereby several free states, united together, assist in the deliberations which relate to the common good of that body which they are convened to form. The nobility who repaired to the antient dyets under the chief of the provinces from whence they came, and whose opinion was not neglected, though their votes were not admitted, appear no longer at the present dyets. The emperors formerly assembled these dyets according to the exigency of the affairs for which they wanted the consent of the states, for the assemblies, that were fixed and settled for certain seasons of the year, came by degrees to be out of use, and all those dyets were only occasional. The dyet of these times must of necessity be perpetual, after the manner of the assembly of the *States General* of the United Provinces of the *Netherlands*, the nature of which it resembles at this very time, because all affairs which relate to the empire in common, ought to be treated of at the dyet, and that

therefore



therefore the *States of the empire* would be no sooner dismissed, but there would be a necessity of re-assembling them, not without loss of time, and a multiplication of expences.

II. As matters now stand, it would not be absolutely necessary to mention here what relates to the convention and opening of the dyet, because there is not the least appearance, as long as the present form of the empire subsists, that the dyet, which has been actually existing since the year 1663, should come to an end, or that another should be convoked with the requisite formalities. But forasmuch as the thirteenth article of the capitulation, wherein there is mention of the dyet, supposes also that the contrary case might happen, it will not be altogether unnecessary to take notice of what the public laws prescribe upon that head, and what has been the practice upon the like occasion. The dyet is summoned by the emperor, who issues particular letters for that purpose, signed by his own hand, and counter-signed by the vice-chancellor, which he directs to the *States of the empire*, and in which he makes mention of the principal matters that are to be debated in that assembly, to the end that such as cannot, or will not come to it in person, may give the necessary instructions to the ministers whom they send to it in their stead.

stead. The place where the dyet is to be held must also be situate in the empire; and the same must be agreed upon between the emperors and the electors, as well as the time when it is to commence. And, tho' it belongs principally to the emperor to summon the states, it is nevertheless said in the article of the capitulation which I have just now quoted, that he shall summon them at least once in ten years, and as often as within that term as the welfare of the empire, or of any of the circles, requires; and he shall also, moreover, as the electors shall require it.

III. All the *states of the empire* must be summoned to the dyet without distinction; and the emperor cannot deprive one of his right of session, nor suspend it, without the previous consent of the electors, princes, and states of the empire. An ecclesiastical prince enjoys this right from the moment that he is elected, without the necessity of waiting for the bulls from Rome for it, which he is under for the exercise of his ecclesiastical functions. Nor is it necessary that any prince, spiritual or temporal, shall have previously received the investiture of his dominions. If the archiepiscopal, or episcopal see be vacant, the summons for the dyet must be addressed to the chapter, and, if a temporal prince is a minor, his

his guardian must be called to it. Forasmuch as the right of sitting in the dyet is annexed to certain provinces which depend immediately on the empire, and on the territorial superiority which a member of the empire enjoys in it; if that province be so disjoined that every one, who possesses a part of it, exercises a territorial superiority in it, and has received the investiture of it separately, each of them must be invited singly to the dyet, there to give his suffrage. If, on the contrary, several possess one and the same province, in common they shall all be invited; but all together shall have only one vote.

III. All the states of the empire must be invited. IV. I will not insist on the description of the ceremonial, which the electors, princes, and other states of the empire, who come to the dyet, or their plenipotentiaries, observe towards one another at their first visits and counter-visits. Were I to remark the punctilios they there observe in this matter, the dyet would not be so much taken for an assembly of members of one and the same body; as for a congress of princes, who have no union among them, and who are very delicate in the point of their rank. Not to say, that the distinctions, which the ministers of the electors demand from those of the princes, often disturb the good harmony that ought



ought to prevail among them ; and sometimes hinder their private interviews. The ceremonies, attending the opening of the dyets, have also given birth to frequent disputes for the precedency, because the ministers of the princes of the ancient families, were not willing to yield it in the public procession, either to the new created princes that were there in person, or to a younger prince of any ancient family, who represented his elder brother, or any other kinsman at the dyet.

V. The dyet is opened in the following manner. The states of the empire, or their ministers, go to take the emperor up at his palace, and conduct him to the church, and from thence to the hall of the general assembly. When they have all taken their places there, his imperial majesty gives it in charge to some prince of the empire, or to his principal commissioner, of whom more shall be said presently, to thank all the members that are assembled, for their repairing with so much diligence to the dyet; and to recommend it to them, to dispatch, with speed and unanimity, the affairs contained in a written paper, which he causes to be read to them by one of his counsellors. After this *proposition of the emperor*, as it is called, is read, the states consult immediately (though only for form sake) upon the general answer to be given

given to his imperial majesty, which consists only of thanks for his care to assemble them for the public good, and of assurances that they will proceed to the deliberations with all the necessary zeal and dispatch. The person who is actually charged with this compliment, is the elector of *Mentz*, who discharges his commission that instant, and then the emperor is reconducted to his palace. In his imperial majesty's absence, the same ceremonies are observed to his representative, who remains at the dyet, with the title of *principal*, or *first commissioner*. This office is usually held by a prince of the empire, or some cardinal. His chief function at the dyet is, to receive what his majesty directs to him, with the title of the *decree of commission*, to communicate or propose to the dyet; as also all memorials, which the *States of the empire* are desirous should be laid before the emperor, together with the result of their deliberations. He is allowed an adjunct, who has the title of *concommissary*, and officiates in the room of the first commissary, when he cannot attend there himself. This second post is also supplied by a person of distinction; but it is moreover required, that he be a man who is well acquainted with the public law of the empire, and the business of the dyets.

VI. The elector of *Mentz* has the general direction of affairs at the dyet, in quality of great chancellor of the empire; and, for this purpose, he keeps a chancery. These are his principal functions. VII. The emperor causes his proposition to be given to him, to the end, that he may give a copy of it to the states of the empire, which he does *per dictaturam*, as it is called; that is to say, by causing the same to be publicly read to the secretaries of the ministers at the dyet, by some one of his secretaries. The same method is observed with regard to all the other writings and memorials; which are proposed for the cognizance of the dyet. All the ministers that come to it, either from a member of the empire, or a foreigner, are obliged to produce their full powers before the chancery of *Mentz*, thereby, to give authority to their ambassys. The first commissioner gives him a copy of the decrees of the commission, which he receives from his court. It is also to the chancery of *Mentz*, that the states of the empire, and the foreign princes, who have any thing to communicate to the dyet, are to address their memorials. Finally, it is the plenipotentiary of *Mentz*, who notifies the day of session to the ministers of the other states, and who, for that purpose, sends them a note, in which the subject, that is to be brought on the carpet, is specified.

VII. These



VII. These rights of the electors of *Mentz* are actually of such great importance in themselves, that they would not fail to give him very greatered it, were they exercised with im- partiality. But if we may believe the public minister, whose work I have quoted, it will be surprising to see, to what a length this director general of the dyet can, when he pleases, stretch these prerogatives. This au- thor asserts, that the chancery of *Mentz* keeps the memorials delivered to him in order to be communicated to the dyet, as long as it pleases; not excepting those that come to it on the part of the emperor: that in some times suppresses them, and leaves out of them what is not to its liking; and does not send them to be reported till the time for debating them is elapsed. In a word, that it only consults its own interests, and those of the catholic party, in this important article of its own direction. The said author adds, that the remedy of this abuse has indeed been thought of more than once, but that it has been suppressed for fear of the divisions which would arise in the college of the elec- tors, concerning the right of directing the af- fairs of the dyet, if the election of *Mentz* was to be deprived of it.

When VIII. When

be brought on the carpet, is specified.

VII. These

VIII. When any affair is to be debated, the *States of the empire* divide themselves into three colleges, as they are called, each of which has it's conferences apart, under a particular director, as president. The first of this college is that of the electors, consisting at present of nine persons, in which the elector of *Mentz* officiates also as director. The second college is that of the spiritual and temporal princes; of the prelates, who are not intitled princes; and of the counts of the empire. The arch-duke of *Austria* has the first place in it, and for this reason sits on the bench of the spiritual princes, who sit on the right hand side of it; and he, and the archbishop of *Saltzburg*, who have the direction of this college, exercise it alternately, according to the subject-matter of their deliberation. This method was made choice of, because it is of importance that he, who directs an affair, should strictly pursue it; and that, for this end, it should not be put into another hand. What is singular in this college of the princes, with regard to the votes, is, that the prelates who have not the title of princes, and the counts, do not give their suffrage individually, but vote by the benches or classes. Of these the first form two, and the latter four. The two benches of the prelates are those of the *Rhine* and *Swabia*.

The

The four benches of the counts are those of the *Weteraw*, *Swabia*, *Franconia*, and *Westphalia*. Each of these benches keeps a minister at the dyet, as proxy, to give it's suffrage. The two colleges I have just now mentioned, are called *superior*, with regard to that of the free cities, which form the third college, having for it's director the deputy of the imperial city where the dyet is assembled. It is very well known, that in all bodies, whoever is the president does not want the means to favour the cause which he espouses, whether as to the manner of setting a proposition on the tapis, or in the way of computing the votes. But things have been carried to so great a length in these colleges, that it is with reluctance I now endeavour to transcribe what is reported upon this subject by my author, was an eye-witness of these transactions.

IX. It is a maxim observed in all councils, that the opinion of the majority is deemed to be that of the whole body. The condition of the empire, whose members have several particular interests of their own, has not permitted this rule to be followed at the dyet. These therefore are the cases, which according to the treaty of *Osnabrug*, Art. V. Sect. 52. ought not to be decided by the majority of votes, but composed amicably. 1. " When the affair in question is religion. 2.

O

" When



" When the states of the empire cannot be  
 " considered only as one separate body.

" 3. When the catholics and protestants are  
 " at such variance, that all the protestants  
 " range themselves on one side, and all the  
 " catholics on the other." There was an

attempt to make the affair of contributions  
 one of those things which ought not to  
 be regulated by the majority of voices. But,  
 forasmuch as they could not agree in this  
 proposition at the congress of *Osnabrug*, it  
 was referred to the dyet, where it has not  
 yet been determined. The difficulty of an

Medit. ad  
 J. P. O. P.  
 758.

agreement upon this head, at that time, a-  
 rose chiefly from the protestants, who were  
 apprehensive that the imperial court would  
 have an understanding on that head with the  
 catholics, to their prejudice, by inclining the  
 latter to vote for the subsidies which the em-  
 peror should demand, with a secret assurance  
 that those contributions should not be exacted  
 from them with rigour.

X. A great dispute has arisen likewise be-  
 tween the protestants and papists, upon the  
 third point, where I said, that the majority  
 of votes could not take place at the dyet, viz.  
 when they were so divided, that all the catho-  
 lics were on one side, and all the protestants  
 on the other. The protestant party being sensible  
 that it was convenient for it, to take the com-

mon

mon opinion when the evangelic body had particular conferences upon affairs which it was of importance for it not to abandon to the majority of votes, of which the catholic states are sure, in the two first colleges, by the superiority of their numbers, the latter were disgusted at it, and would not allow the protestants that their resolutions taken separately, and proposed afterwards in each college, by any one of their body, as their common opinion, should hinder the majority of voices, according to the meaning of the aforesaid article of the treaty of Osnabrug. But the more warmth the catholic states have shewn, to oppose this proceeding of the protestants, it has but the more convinced the latter, how much it is their interest, not to depart from it. In short, they look upon their right of forming a separate party, *juste et de droit*, as the buckler of their liberty, and the method which they follow in this respect, as the surest for exerting that right effectually.

XI. When in any matter that has been considered in the three colleges, that of the electors is not of the same opinion as that of the princes, they endeavour to maintain a mutual agreement in the affair, by particular conferences, which they call *relations*, and *correlations*. It was natural, that the

directors of these two colleges should be principally charged with those conferences; but then it seems, on the other hand, that every college ought to be allowed to give them some adjuncts out of it's own body, because they complain, that these directors do not always follow the opinion and institutions of those whom they represent. These conferences are continued until the two colleges are entirely agreed, or until there are fairer hopes of their coming to a better understanding. In the first case, they send an invitation to the college of the towns, to impart their common resolution to it, and to agree with it, supposing that it differs in opinion from that of the electors and princes. If the conferences that are held with this intention do not take effect, the chancery of the dyet only makes mention of the different opinion of the towns, in a written paper delivered to the principal commissary, which is intituled *Reichs-Gutachten*, i. e. the opinion of the empire. Sometimes the question is debated, whether the majority can take place, with regard to the resolutions that are passed in the three colleges, in such manner, that the uniform opinion of two of those colleges, may be deemed for that of all the *States of the empire*. But even they who would be glad to have it so, in certain circumstances, are so well apprised of



of the consequences that might result from it, in cases that would not be in their favour, that they were far from deciding for the affirmative; which moreover does not seem to quadrate with the present state of the *Germanic Body*.

XII. When the three colleges are of the same opinion, it is also necessary that the emperor, to whom they communicate it, should join his consent to it. If it happens that his imperial majesty does not approve of the opinion of the empire, the debates are resumed in each college; and, if the opposition remaining between the emperors and the states of the empire upon the matter in question, cannot be removed, it continues undetermined. Formerly the matter was referred to the next dyet, but now that this assembly is become perpetual, they stay for some change of conjunctures, to bring it again upon the carpet. As the unanimity of the two colleges is not sufficient to form strictly what is called, *An opinion of the empire*, so neither can it, by the emperor's accession, receive the force of a *resolution* of the empire, or *Reichs Shus*, which is the name given to the *opinion of the empire*, when it has been approved of by the emperor.

XIII. The dyet concludes with the publication of the *recess*, as it is called, which is an abstract reduced to writing, of all the resolutions that have been passed in the dyet while it continued. It is the emperor who publishes this *recess*, in his own name, with an exhortation to all the *States of the empire* to conform to it; and an order to the tribunals of the empire, to comply with the regulations of it, in their sentences and decrees. But without need of observing, that the *recess* itself imports, that the articles therein contained, have been regulated between the emperor and the *States of the empire*, by way of *pact and convention*; it appears very clearly, by the description I have just now been giving of the manner of treating matters at the dyet, that every thing is transacted in it, suitable to the nature of free states, which unite with one another in affairs that are requisite for the common benefit of the whole body.

XIV. Not to lose sight of this true state of the *Germanic Body*, every thing wherein the dyet of the empire deviates from the dyets that are still existing in other kingdoms, where the nation has reserved to itself any share of the government, will not be deemed as defective and perplexing. It will be rather

ther found to be a prudent expedient that has been taken, to the end that all the *States of the empire*, as true free members of a confederated body, might have their share in the deliberations for the public good; and that, at the same time, such of them as hold the first rank in that confederacy, by means of their power, and by their contributing the most to the public benefit, might not be deprived of the advantages and prerogatives, which it is but reasonable to let them have over the others; and to the end also, that the majority of voices might take place in things which truly concern the welfare of the whole body; and that, at the same time, they who are the majority, might not have it in their power to incroach upon the spiritual and temporal rights of the others.

XV. It remains for me to give some account of the *deputations*, as they are called, in the style of the chancery of the empire, that is to say, those assemblies to which the empire gives a commission to treat of certain affairs for which it is not judged necessary or convenient to assemble the whole body. These *deputations* are distinguished into *ordinary* and *extraordinary*: They call that an ordinary deputation, which is composed of members to whom the public constitutions give the right of representing the empire, when it is



for reducing itself to a body less numerous. On the contrary, an extraordinary deputation is that which is formed by the particular choice of the three colleges of the empire, assembled at the dyet,

XVI. I will not here stop to give an account of the manner of calling the ordinary deputations, and how they proceed in their deliberations; those assemblies being, for several reasons, almost wholly disused. 1. Because they are no longer necessary. — Recourse was had to them heretofore, when they did not care to assemble a general dyet. But, forasmuch as the necessity the emperor is put under, at this time, of desiring the opinion and consent of the *States of the empire*, in all matters that concern the *Germanic Body* in general, has rendered the present dyet perpetual; it is plain, that the ordinary deputations may be dispensed with. 2. It is not probable that the princes, and the inferior states, should so easily consent to such a deputation, which gives the electors too great an advantage; because the latter are all of them of the number of the ordinary deputies, and for this cause hold their separate deliberations at these petty dyets. Moreover, 3. It is required, that in the deputations, both ordinary and extraordinary, there should be an equal number of the deputies of the

the two religions, which could not possibly be observed in an ordinary deputation, of which all the electors ought to be members, and among whom it would consequently be impracticable now to form the equality which I have mentioned.

XVII. The extraordinary deputations are, on the contrary, still very much in use, not only for the affairs which are treated of in the name of the empire out of the dyet, as it happens when a visitation is to be made of the imperial chamber, or an embassy to be sent to a congress; but also at the dyet itself, when it is proper that an affair should be therein prepared by a small number, before it be referred to the whole body. Thus they proceeded in drawing up a perpetual capitulation; and we have already observed elsewhere, that in the examination whether a member of the empire has deserved to be put under the ban, the same proceeding is to be had at the dyet, when the case is laid before it.

XVIII. The thing of the greatest importance in the business of the extraordinary deputations, is the question, Whether the members that are proposed to be employed for that end, ought to be chose in a full assembly, in such manner that the catholic states may have

have their vote in the election of a protestant member, and the protestants in the election of a catholic member; or whether each party ought to chuse the number of the deputies of it's particular religion separately? This affair has been very much discussed, on account of the choice of a deputation for visiting the imperial chamber; and the protestants carried it for the latter opinion by the dint of their resolution, in which it does not seem that they were at all to blame. It is natural for such side to wish that the choice may fall on the persons it thinks to be the most knowing, and the most zealous; and as the method of chusing them apart is for the advantage of the protestants, they are willing that the catholics should also enjoy the same advantage. As to what the former obtained by the treaty of *Osnabrug*, (Art. V.) "that in all the deputations of the empire, half of the deputies should be of the protestant religion, and half of the catholic religion;" it would not answer their views if they were cramped in the choice of the members of their own party, and had reason to apprehend that the superior number of the catholics in the two upper colleges might be prejudicial to them. They imagine also, that such of them as would be apt to tread awry, may be better restrained when the choice of the deputies of the protestant religion is not made



in a council where they are mingled with catholics, but by the evangelic body specially assembled for that purpose.

## CHAP. XVII.

*Of the principal matters that are laid before the dyet, and of the recourse which the States of the empire may have to that assembly when they have been aggrieved by the sovereign tribunals of the empire.*

I. **T**HE affairs which are to be laid before the dyet, and for which the emperor is to solicit the consent of the electors, princes, and states of the empire, are those in general which relate to the whole Germanic Body. But, so far as the eighth article of the treaty of *Qsnabrug* makes particular mention of some of the principal affairs of this nature, it may be of use to glance over them, and to mention what the last capitulation contains upon this subject, with the addition of some short remarks.

II. The first of these affairs expressly mentioned in the treaty of *Qsnabrug*, is, that which relates to laws that are there to be made, or amended, or abridged, or explained.

“The emperor expressly promises, in the capitulation

Art. 2.

“ lation aforesaid, that he will not deviate from the constitutions of the empire made at the dyet, nor from the treaty of *Osna-brug*, which has been reckoned among the fundamental laws of the empire; that he will not attempt to alter, or to be the sole interpreter of the laws which have been already made, and much less to make new ones; but that all those matters shall be treated of at the dyet, by the advice and consent of all the states of the empire.”

Several things had occurred heretofore in the recesses of the dyet, which did not concern the public state of the empire, and that might be deemed as civil laws, which the emperor and the states had thought fit to introduce into the several provinces of their dominions. Laws of this sort are not such, but those who have subscribed to them may likewise alter, because the legislative right which they exercise within themselves, cannot be restrained by laws that have been made at the dyet, farther than the common benefit of the empire demands, and farther than as the said laws were made with this view.

III. I have already observed, in speaking of the complaints that have been often made against the aulic council, that the judges who compose it, take the liberty every now and then to explain the laws by their own authority:

thority: The imperial chamber has not been exempt from the same reproach, and the dyet to which these complaints have been preferred, opposes this irregularity as much as it possibly can. It were therefore to be wished, that every obscurity and ambiguity in any of the fundamental laws of the empire, could receive an explanation at the dyet. But as those passages turn upon some contested point, either between the head and the members, or between the states of the two religions, there is no foundation for hopes that the dyet will ever attempt to decide them, or that it can ever succeed in it.

What I say of the *written laws*, may also be applied to the *laws not written*, upon which there are frequent disputes. Nothing is more common in the empire than to found a right upon some repeated acts, and to make those acts pass for an obligatory custom, tho' they were never so free and voluntary. It would therefore be very necessary and useful also, in order to put an end to these disputes, that the dyet should pass judgment upon them; but the thing is not possible, because the disputes of one party with another can only be adjusted by an amicable composition.

IV. The *resolution for going to war* depends also on the dyet. It is true, that the last



Art. 4.

last capitulation even permitted the emperor Charles VI, "in case of any attack for the cause of the empire, to make use of all methods whatever, where there was no danger to be apprehended for that body." But this case, which supposes that the attack should be so sudden, as that the empire would not have time to concert with the states by what means to ward off a pressing danger, does not overthrow the rule, because a single governor of a province is authorised to do the best he can to repel an invasion, when he has not time for consulting his masters. I will not repeat here what I have already said, as to the permission which

Ch. v. §.

22.

the capitulation seems to give to the emperor, to content himself, in some cases, with the single approbation of all the electors for the undertaking of a war. I will only observe, that the emperors never consult the dyet concerning a war in which the whole empire is to be concerned, before the way is already paved by particular negotiations with some of the circles and most powerful princes of the empire.

Art. 4.

"But the emperor obliges himself to keep the peace with the neighbouring potentates, and as far as possible to hinder the empire from being involved in a foreign War."

Ibid.

V. "It depends also on the dyet to ap-  
" point

“ point the general who is to command the  
 “ army of the empire, to nominate a council  
 “ of war for him, consisting of an equal  
 “ number of persons of the two religions,  
 “ and to make the military regulations.” All  
 the officers of the army, not excepting him  
 who commands in chief, with the title of  
 field-marshal of the empire, are to take an  
 oath both to the emperor and empire. It is  
 not allowable to build a fortress in any coun-  
 try of the states in time of war, nor to place  
 a garrison in those already erected, without  
 the consent of such states, unless such of the  
 states be not singly in a condition to defend it  
 against the enemy, and unless the public good  
 demands it should be secured provisionally.

VI. A prince of the empire may observe a  
 neutrality in a war which does not properly  
 concern the defence of the empire, and into  
 which the empire only enters for making it a  
 common cause with another power, even  
 tho’ such war should be resolved on by the  
 majority at the diet. Of this the house of  
*Bavaria* has furnished two instances: it bore  
 no part in the war which the empire de-  
 clared against *France*, for the support of the  
*Dutch*, when attacked by *France*; nor in that  
 against *Sweden*, which made an incursion into  
 that of *Brandenbourg*, to oblige the elector  
 to withdraw his troops from *Alsace*, where  
 they

they acted against the *French*. It also observed a neutrality very lately, when the empire entered into a war with *France* on account of the election of the king of *Poland*.

Art. 2.

VII. The kings of *Great Britain* and *Prussia* stipulated in a secret article of the treaty of a defensive alliance, which they concluded with the king of *France* at *Hanover*, "That if, in resentment for the success which his most christian majesty may furnish to his *Britannic* majesty and his *Prussian* majesty, to secure them from any disturbance which they might suffer in the dominions they possess, the empire should happen to declare war against his most christian majesty; forasmuch as in this case such a declaration would no less affect the most serene kings of *Great Britain* and *Prussia*, whose interests would be the occasion of the war, than his most christian majesty, they will not only forbear to furnish their quota in troops, or in succours of any other nature whatsoever, even tho' their said *Britannic* and *Prussian* majesties should not be included and named in the declaration of war which the empire should make against *France*, but they will even act in concert with his most christian majesty till the peace disturbed upon that account be re-establish-



“ ed.” The imperial court would have had this stipulation deemed as contrary to the engagements of those princes towards the emperor and empire; but it was demonstrated, in answer to a writing which presumed to accuse them of it, that, in case of such an alliance, they would only resist an unjust enterprize of the empire, which was not allowed to attack any of it's members for an innocent alliance with a foreign power; and that to fall upon their ally, out of resentment for the alliance which they had contracted with him for their mutual defence, was falling upon themselves.

VIII. The affair of *contributions and subsidies*, is another of those which are to be regulated at the dyet; and we have already observed it, to be a point as yet undecided, whether the majority of the *States of the empire*, that should be inclined to grant them, could oblige the states to submit to their opinion. It will be very difficult for them to come to an agreement in this article, because it is not one of those that are determined by the majority of votes. Nevertheless, the emperors always find the *States of the empire* ready enough disposed to grant the contributions and subsidies which the honour and defence of the empire really demand. The word *contingent* is the term for what each of the

members is obliged to furnish either in men or in money. There are matricula's which point out this contingent, and they are formed on the ancient *Roman expeditions*, so called from the purpose they were intended for, which was to accompany the emperor to *Italy* to be crowned there in *Lombardy*, and at *Rome*.

These matricula's plainly shew how many men every member ought to contribute for a war, and what ought to be the tax *per month* for every horse or foot-soldier, payable by those who will not, or cannot, furnish their contingent in men: so that it is a very easy matter to settle the contributions in money upon the footing of the *Roman months*, as it is still called, *i. e.* by making every one to contribute what he would be obliged to furnish if he paid this number of months according to the tax of the matricula. But it is more easy to calculate these contributions, than to bring them into the public treasury. There are some members of the empire who complain that they have been over-rated in the matricula's; others plead for an abatement of their old contingents, on account of the losses which they have suffered since; others are for deducting out of the present contributions what they pretend to have paid too much in former; others, in fine demand an abatement

of the states. Body should be heard, the states would

of their tax, and even an intire exemption, by reason of some necessities which hinder their prompt payment. In short, they are all backward in furnishing their contingent by the time limited; the consequence of which is, that one half of the army, which the empire resolves to form, seldom appears in the field; and that the sums, tho' far from being extravagant, which it is agreed to furnish for the expence of two or three fortresses which the empire is at the charge of maintaining, are very late, if at all, brought to the public chest.

IX. The whole empire must likewise concur in the *alliances* to be concluded with foreign powers, and in the *embassies* to be sent or received on the part of the empire. But, as it would be difficult to treat of an alliance with the whole dyet, because of the secrecy which such negotiations require, it is sufficient if the dyet authorise the emperor expressly or tacitly to draw up the plan of the alliance, and to reserve to itself the ratification of it. It is a long time since an embassy has been sent on the part of the empire; but several foreign princes have had, and still have residents in the present dyet. As it may be of very great importance to the empire, that the proposal which such minister may have a commission to make to the *Germanic Body* should be heard, the states



Franc. I.

would have ground for complaint if the emperor refused, for particular reasons, to admit him to the dyet, as the emperor Charles V. did with regard to the embassadors that the king of France would have sent thither, to clear himself of the heinous imputations charged upon him by the said emperor. But it appears, still more prejudicial to the right of the members of the *Germanic Body*, that the emperor should oblige a foreign minister to quit the dyet where he has been received and acknowledged, without previously imparting to them the reasons for his taking such a step, and without requiring their consent to it. I refer it to the next chapter to speak of the embassies that are to be sent for a peace which the empire would be willing to conclude, wherein the states have an indisputable right to concur.

X. I have already said, where I treated of the tribunals of the empire, that an appeal cannot be made from their sentences to the dyet for having them amended, but that complaints may be preferred to it against judges, who, in the proceedings against a member of the empire, have violated the public constitutions, and that a redress may be prayed for of this grievance. The right of making such application is founded, in the first place, upon the consideration that those tribunals incontestably derive their authority from the emperor and

and the empire, either directly, as the imperial chamber does, or indirectly, as the aulic council; and in the second place, upon the obligation which the judges are under, by their oath, not to deviate from what is prescribed to them by the constitutions of the empire, as well in the process, as in the sentence. Since therefore it is of the last importance that these constitutions be not infringed, and as the case where this happens, either through the error or evil intention of the judges, concerns the security and liberty of all the members of the empire, it is but reasonable that the door should be kept open for recourse to the dyet by the person who implores the protection of it, when he has been injured by a proceeding manifestly contrary to the said constitutions, and to the rights enjoyed by the states of the empire. The emperor is expressly obliged, by his capitulation, to leave them this passage free. It may happen sometimes, indeed, that the complaints of such as apply to the dyet may not be well founded; but it would be too dangerous to abandon the cognizance thereof solely to the emperor, and it would be yet more contrary to the rights of the dyet, if the plenipotentiary of *Mentz*, to whom the complainants are obliged to give in their memorials, was to refuse them his ministerial function for the *dictature*, as it is called,

of the exhibition of their complaints to the States of the empire, whose support they implore against those injuries.

## CH A P. XVIII.

*A particular historical account of the manner in which the States of the empire have concurred in treaties of peace with foreign powers, since the treaty of Westphalia.*

**I.** THE right of the States of the empire, to concur in a peace with a foreign power, is one of those prerogatives which are expressly ascribed to them by the peace of *Osnabrug*; and this right is the more important, because it might happen that the empire may be obliged, by the ill success of its arms, to yield a city or province, which was a part of its body, to a conquering enemy; or to renounce a claim justly founded, or, in fine, to consent to some alteration of those constitutions with regard to provinces that may be reconquered from the enemy.

**II.** The emperor *Ferdinand III.* was very loth to consent that all the states of the empire should have the liberty to repair to *Osnabrug*



*nabrug* and *Munster* to have any share in the negociation of the peace which that emperor concluded at the first of those towns with the crown of *Sweden*; and at the last, with that of *France*. Nevertheless, he was obliged to yield to the strenuous instances of both those crowns, who thought on the one hand, that it was not just, that the *States of the empire*, with whom they were in alliance, and who had need of their assistance, for obtaining a redress of the complaints which they had against the imperial court, should be excluded from the congress for a peace; and, on the other hand, that, for the greater security of what they themselves had to settle with the emperor, it was necessary, that the rights of all the *States of the empire*, to concur with him in the government of the *Germanic Body*, should be well established and secured, in the peace that was upon the tapis, which could not be done, without hearing them, and consulting them in matters of the greatest importance.

III. This congress for a peace, therefore, intirely assumed the form of a dyet, with regard to the affairs which were there to be settled between the emperor and the empire, by the mediation and intervention of the said crowns, to which the *States of the empire* delivered their complaints to be com-

municated to the ministers of the emperor, who on their part, notified their answers to the *States of the empire*, by the same hands; upon which answers the said states held their conferences, much in the same manner, as is the practice at the dyet. They were also admitted to the signing of the treaties of peace, as contracting parties; and the ministers of *Sweden* delivered them two originals thereof, one of which was to be kept by the elector of *Mentz*, for the use of the empire in general; and the other, by the elector of *Saxony*, for the use of the protestants in particular.

IV. The right of the *States of the empire*, to concur in the conclusion of a peace which is made in the name of the whole *Germanic Body*, was therefore well established, both by the transaction, and by the express terms of the eighth article of the treaty of *Ofnabrug*. But the method which had been observed upon this occasion, could not serve as a model for the congress at *Nimeguen*, which furnished the *States of the empire* with the first remarkable occasion, to exercise their *jus adlegandi*, or right of adlegation, as they called it, because this congress was of quite another nature; the empire having nothing to demand of *France*, with which it was in treaty, but that, in the countries which had been yielded

to it, by the peace of *Münster*, with certain clauses, it should abolish the innovations that seemed to be contrary to those clauses, and that affairs should be regulated upon this article. The *States of the empire* not being able to settle with the dyet, in what manner they were to exercise their right of concurring with the emperor, for the conclusion of the peace then in treaty, they resolved to charge the emperor's ambassadors with the interests of the empire, by a particular full power, and to require of them, to correspond with the dyet, upon those points of their negotiation, of which it ought to be informed, and for which it would be of importance that they should from the said dyet receive separate instructions.

V. This resolution ought not to have disgusted the imperial court, and, if it had been so wise as to have made a right use of it, it might have easily put things on such a footing, that the empire would always have taken the same method, and that consequently it would scarce ever have been perceived abroad, that the members of the empire shared with their head the prerogative of making peace: But the emperor's ambassadors behaved so ill in the negotiation with which the empire had charged them, that they not only disgusted the princes that were in the league against *Sweden*, but



but almost the whole dyet. The former complained, that their interests had been sacrificed, by consenting that they should restore whatever they had taken from the Swedes in Germany; and the dyet was dissatisfied, because nothing had been settled with France, to prevent certain towns of *Alsace* from losing the rights and privileges which the empire was willing to reserve to them by the peace of *Munster*, when it yielded that country to the said crown.

VI. Indeed it was not long before the sad consequences of this peace appeared; *France* established at *Metz* and *Brisac* the Chambers of Reunion, as they were called, for the sake of recovering the ancient appurtenances of the countries which I have been speaking of; and the king, who caused those chambers to pass judgment in favour of his rights, did not fail to have their decisions executed on the spot. It was in vain for the empire to murmur at this proceeding, and to treat it as an usurpation; and it was in no condition to oppose it, because those very powers which had acted with most vigour against *France*, in the war which was just concluded, were then the most forward to unite with that crown, and shewed no manner of desire to break again with it. Therefore there was an absolute necessity for the empire to have recourse

course to amicable methods, and that it should try, whether a congress appointed at *Francfort* could not prevail on the king of *France*, to set bounds to his pretensions. The emperor would have been glad that the empire would have again trusted him with the care of this negociation; but the remembrance of what had passed made the dyet take a resolution to join an extraordinary deputation to the imperial ambassadors, consisting of some members of each college, which it furnished with a particular full power, and the necessary instructions for that purpose. It moreover required, that the said deputation should confer, not only in particular with the emperor's ministers, on points that were thereby to be settled with *France*, but, that it should also assist at the conferences with the plenipotentiaries of that crown. The necessity which the emperor was under at that time, would perhaps have inclined him to yield to this demand; and he had already actually consented, that the deputies of the empire should be present at the opening of the congress, when *France*, whose favour had been useful to them upon this occasion, chose rather to take advantage of the difficulties which still remained to be removed, in order to break up the congress, and to abandon that decorum, which she seemed inclinable to observe at first. And, as the empire

## The GOVERNMENT of the

pire was glad to have convinced the emperor, upon this occasion, how far it thought it had a power of extending it's right of *adlegation*, the latter was not sorry that the breaking up of the congress had brought him off of this dilemma.

VII. But circumstances were not equally favourable to the *States of the empire*, at the congress of *Ryswic*, to which an extraordinary deputation was likewise nominated at the dyet, in spite of all the pains which the emperor took to divert them from it, and to make them resume the method made use of at the congress of *Nimeguen*. For this deputation there were appointed four persons of the college of electors, twenty-four of that of the princes, and four of that of the towns. This great number of deputies only served to increase the objections against their admission to the conferences with the ministers of the foreign powers, and against their rank or precedence; the consequence of which, after all, was, that they were forced to be content with receiving information from the emperor's ministers, of what had been treated of in those conferences; and with imparting, in their turn, to those ministers what was the result of the particular deliberations of the deputation, as the opinion of the empire. They were called indeed to the signing of  
the



the peace, but they found at the same time, that little regard had been shewn to what they desired; and the deputies of the protestant states had the particular mortification to perceive, that, in the fourth article of the treaty of *Ryswick*, a clause had been inserted, without their knowledge, which made a great breach in the treaty of *Osnabrug*; because *France* thereby required, that, in the provinces which she restored to the empire, the *Roman* catholic religion should subsist (to the great prejudice of the protestants) on the same foot as that crown had put it upon, during the time that they were in her possession. The protestant ministers, whose masters had least to fear from the menaces of *France*, had indeed the spirit not to sign this treaty; but their masters themselves found they were under a necessity of contenting themselves with the declaration which the emperor gave to them, that the said clause should not be drawn into consequence, to the prejudice of the treaty of *Osnabrug*; and, upon the faith of this assurance, they were glad to give their consent at the dyet, to the ratification of the treaty of *Ryswic*.

VIII. Though the deputation of the empire was so little satisfied with the congress, which I last mentioned; yet the *States of the empire* formed a new one, at the time when the

the negociation which *France* set on foot at the *Hague*, with the allies, gave some reason to imagine, that a general peace was on the point of being concluded. But affairs took quite another turn. *France* rejected the preliminary articles upon which the confederate powers were inclinable to conclude a peace with her, and, taking advantage from the death of the emperor *Joseph*, and the change of the ministry at the court of *Great Britain*, she brought the war to a much more happy period than she had reason to expect. The emperor *Charles VI.* stiffly held it out indeed for a time; but, finding he was abandoned by his allies, he saw himself obliged to come to an accommodation with *France*, as they had done: and this he did in such a manner that the empire had little share in it. The basis of this agreement was laid without its participation, by secret conferences that were held between prince *Eugene* and the marshal *de Villars*, at *Rastadt*; and when their work was to be consummated, at the congress appointed at *Baden*, the *States of the empire*, to whom notice was given of it, plainly saw, that their presence was required for nothing more than mere formality. The protestant states perceived likewise, that they had no hopes of obtaining the repeal of the clause in the fourth article of the treaty of *Ryswick*, the thing they had most

at heart; because it was actually agreed beforehand at *Rastadt*, that the said clause should be confirmed in the treaty of *Baden*. This consideration inclined them not to oppose the opinion of the catholic states, who were well enough pleased that the empire committed it's interests to the care of the empire. They only declared at the ratification of the treaty of *Baden* in the dyet, that, with regard to the peace of *Ryswick* now confirmed, they adhered to the professions which they had made at the dyet upon several occasions, that it ought not to prejudice the rights allowed them by the treaty of *Osna-brug*.

IX. The imperial court treated the empire no better in the last peace it concluded with *France*. The emperor alone settled it with that crown, and only endeavoured to make his reasons for it acceptable to the dyet, and to desire it's ratification. It must be confessed in the general, that the manner in which the *States of the empire* have hitherto exercised their right of concurring with the emperor in the conclusion of a peace, has been of little avail to them. This right would be quite of another force if the most powerful princes of the empire, who may be particularly interested in the approaching peace, did not prefer their own advantage



advantage by separate embassies, which are more to their honour, and with regard to which the electors enjoy the same rights as crowned heads.

---

## C H A P. XIX.

*Of the evangelic body, and the right which it has to protect all those in the empire who suffer for the protestant cause.*

I. **I**N discoursing of the manner in which affairs are treated of at the dyet, I shewed that the protestants sometimes hold special conferences there on subjects which concern the state of their religion in general; and I likewise observed, that, in cases where the empire could not be looked upon as one sole body, affairs which are brought under consideration, could not be decided by a majority of votes. It will therefore be necessary to say something of those particular bodies of which the empire is compacted, and whose separate interests sometimes disturb it's harmony. As the states of the empire are divided, with regard to religion, into those of the *Romish* religion, called the *Ancient* in some of the recesses, and those of the *Augsbourgh confession*, in which class the treaty  
of

of *Osnabrug* expressly includes those of them who are called the *reformed*, these two parties may be considered as two powerful bodies, whose interests unhappily are so different, that both are afraid of losing some part of their rights and privileges. The former have hitherto had this advantage over the latter, that the head of the empire himself has been of their religion, and that the general direction of the affairs of the empire at the dyet is therein exercised by a prince not only catholic, but moreover ecclesiastical, so that they have no reason to fear that the opposite party will ever incroach upon their rights. On the other hand, those of the protestant party have had great obstacles to surmount since the reformation, before they could attain to the regulations they are at present under; and they are sensible that it is of the highest importance for them to keep firmly united together, in order to have the greater benefit from the public constitutions, which are the bulwarks of their religion. In order to explain this article fully, I shall now give an account, from it's beginning, how the protestant states of the empire came to form that association amongst them, which makes them considered as a particular body, publicly acknowledged and recognised by the name of the *Evangelic Body*.

Q

II. The

II. The court of *Rome*, being impatient to see several of it's members shake off it's yoke, left no stone unturned to engage the emperor, *Charles V.*, to bring them back by force within the pale of the *Romish* church. It was therefore natural for those who were openly threatened with this violence, to think of measures for maintaining themselves in the liberty of conscience, by such alliances as only tended to their mutual defence. Their first association, known by the name of the *Smalcald League*, had for it's heads the elector of *Saxony* and the langrave of *Hesse*, in the choice of whom the confederates had principal regard, no doubt, to the distinguished zeal and merit of those two princes.

III. The emperor triumphed over this league by such measures as it would be too tedious to mention here in particular. But the duke *Maurice* of *Saxony*, who had very much contributed to that triumph, by attaching himself to the emperor's interest, and who, as a reward for this great service, obtained the electoral dignity of which his cousin *John Frederic* was deprived, soon formed a new alliance against the emperor, when the latter was for taking the advantage of his victory to destroy the protestant religion.



gion. This new confederacy, into which the most considerable members of that religion entered, and to which *Henry II*, king of *France*, joined himself, produced by the happy success of their arms the *treaty of Passaw*, and not long after it the *treaty of religion*, which was settled at the dyet of *Augsbourg*.

1552.

1555.

IV. This last constitution delivered the protestants, in express terms, from the authority of the pope, and from the jurisdiction of the ecclesiastical courts of the *Romish* church in the empire; it secured those who had separated from that church in the free exercise of their religion, and it also provided that the subjects of the catholic princes, who should be inclined to embrace it hereafter, should have liberty of conscience. But there were two articles that the protestant states could not hinder from being inserted in the religion treaty I am speaking of, which served as seed for fresh troubles. The first imported, “that the ecclesiastical states of the empire, who abandoned the *Romish* religion, should thereby lose their bishoprics, prelacies, or other benefices, with all the profits and revenues thereto annexed.” And, forasmuch as the protestants were unwilling to subscribe to this article, great commotions arose upon that account between the two parties,

1583.

parties, when the catholics employed all their strength to put it in force against the elector of *Cologne*, who abandoned their religion. The second article required, "that such as" "were neither of the old religion, nor of the" "*Augsbourg* confession, should not be tolerated in the empire;" which gave occasion to a dangerous dispute upon the question, Whether the reformed (*i. e.* the *Calvinists*) could enjoy the benefit of the religion treaty, because they were not agreed with the *Lutherans* in the article of the holy supper?

1566.

The most discreet and the most numerous party of the protestants hindered the catholics, who pressed the negative at the dyet of *Augsbourg*, from carrying their point; and the emperor, *Maximilian II*, who was in his temper very much for a toleration, and who stood in need of the assistance of the whole empire against the *Ottoman Porte*, contributed very much also to the preservation of the tranquillity among the members of the *Germanic Body*. But it was too obvious that the vivacity with which some of the *Lutheran* and *Calvinist* divines disputed about the points of doctrine that distinguish the two branches of the protestants, set them every day at the greater distance from one another; and they, who expected to be gainers by these divisions, did not fail to use their cunning to foment them.

V. Besides

V. Besides this discord among the protestants, there was also a jealousy of interest betwixt *Frederic IV*, elector *Palatine*, and *George I*, elector of *Saxony*. The first left no stone unturned to form such a union among the protestant states, as might enable them to defend themselves against the tribunals of the empire, which seemed to have conspired to oppress them during the reigns of the emperors *Rodolph* and *Matthias*; and he thought, indeed, that the care of uniting the protestants was principally incumbent on himself, by virtue of his being the first in rank of that party. The elector of *Saxony*, on the other hand, expected them to adhere to him, in consideration of the signal services which his family had done to the protestant cause in times past. The jealousy of these two princes, added to the necessity which the latter stood in of the favour of the imperial court for his rights to the succession of the dominions of *Juliers* and *Berg*, was the principal cause why he would not enter into the confederacy which the greater number of the protestants formed by the care of the elector *Palatine*, with the name of the *evangelic union*; and that, on the contrary, he espoused the part of the emperor *Ferdinand II*. in the *Bohemian* war already mentioned.

1610.



VI. This war gave a great shock to the *Palatine* family, but was even more fatal to the protestant cause, because it gave that emperor a handle to deprive the protestants, who were at that time very numerous in *Austria* and *Bobemia*, of that liberty of religion which had been granted to them by *Maximilian II.* and his successors. *Silesia* alone was spared in respect to the elector of *Saxony*, who, by his solicitations and the force of his arms, had reduced this country to the emperor's obedience.

Ch. 2. VII. That I may not here repeat what I have elsewhere said of the fatal consequences of this *Bobemian* war to *Germany*, into which the conqueror carried his arms, in order to ruin the elector *Palatine* and his adherents, I shall only mention that the catholic clergy put the  
1629. emperor upon publishing an edict, which ordered all the protestant states in general to restore the bishoprics, abbies, and all the ecclesiastical estates which they had secularised since the treaty of *Rassau*, to their former condition. This, which was but a prelude of the ill-will of the catholic party against them, made them think of a new union.

VIII. With

VIII. With this view the elector of *Saxony* summoned the protestants to *Leipsic*, and the emperor did not oppose their meeting, because he was made to believe that the design of it was only to confer about the proper methods of agreeing with him on certain restrictions of his *edict of restitution*, as it was called. Besides, it was expedient for him to carry it fair to the protestants, because of the preparations that were then making by the king of *Sweden* to stop the progress of the imperial arms. This last circumstance so raised the dejected spirits of the protestants, that they took proper measures in this assembly of *Leipsic*, for their common defence. But the elector of *Saxony* hindered them from uniting at that time with *Sweden*, partly because the said crown should not be a sharer in the lustre which this new alliance gave him in the empire, and partly also for fear of prolonging the war if the protestant states made a common cause with him who offered them his assistance. The imperial court ought to have fortified that of *Saxony* in these politics; but the taking of *Magdebourg* so elated it, that it resolved to turn it's victorious arms directly against the elector, in hopes of demolishing him at one stroke, and that his overthrow would be the surest means to disappoint the enterprizes of

*Sweden*, too weak of itself to make head against all the forces of the emperor, and the catholic party in league with him.

IX. The event, however, did not answer his expectation. The elector of *Saxony* being reduced to extremity, threw himself into the arms of the king of *Sweden*, who being strengthened by the troops of his ally, they jointly gained a compleat victory, of which we have elsewhere mentioned the consequences. The king of *Sweden* endeavoured

from that time to strengthen his party in the empire by a strict alliance with the protestant states; but he had not time to finish this work: And when, after his death, the famous *Oxenstiern*, the great chancellor of *Sweden*, pursued his plan, he was so embroiled with the court of *Saxony*, whose former jealousies he thereby revived, that the said court, forgetting the danger from which it had been delivered by the assistance of the *Swedes*, immediately thwarted the project of the *Swedes* as much as possible, and, after their total defeat near *Nordlingen*, openly abandoned them.

But this step, and the alliances which the elector of *Saxony* renewed with the imperial court, did not procure him the advantages he expected: for, instead of reviving his credit among the protestants by the peace which he concluded with the emperor

1634.

1635.

peror



peror at *Prague*, he intirely disgusted them by this treaty, which did not provide sufficiently for the security of those, who would have willingly acceded to it; and by which several of them were left to the mercy of the court of *Vienna*; besides, that the *Swedes*, by sundry victories, took so full a revenge for the wrong which *Saxony* had done them, that the *Saxon* court of was very glad that it could satisfy them by detaching itself from the emperor, and keeping a neutrality.

X. As affairs still continued in this situation, when the states of the empire repaired to the congress at *Osnabrug*, it is no wonder that the protestants refused to consent that the elector of *Saxony* should be at the head of the conferences which they there held, for the common benefit of the protestant cause in general, and for their own particular interests. It had been natural to have honoured the elector of *Brandenbourg* with this trust, as he was, at that time, the chief of their body, next to the elector of *Saxony*: But, forasmuch as this prince professed the *Calvinist* religion, which was, as yet, not expressly authorised by the public constitutions, and to which the greatest part of the *Lutherans* shewed an aversion, the duke of *Saxe-Altenbourg* was preferred before him.

XI. That

XI. That treaty procured the protestant states all the advantages which they could expect from it, either for the advancement of their religion, or for putting them on a par with the catholic states, in the government of the empire. But they plainly saw, that, for the sake of preserving those advantages, and for the sake of enjoying them with more security, it was necessary that they should keep firmly united together; and that, in the future dyets, there should be always a good harmony amongst them; which demanded that they should chuse some one of their own body, to be director of their conferences, and to undertake the principal care of executing their resolutions. This therefore was what they provided for, at the first dyet, which was held, after the peace of *Westphalia*, at *Ratisbon*, in 1653, and their choice fell upon the elector of *Saxony*, not only by reason of his being the first in rank among the protestant states, but also in acknowledgment for the great services his glorious ancestors had performed to the protestant cause, which made them easily forget the late proceedings of this prince, and ascribe them not so much to a bad intention, as to an error in politics.

XII. The

XII. The regulation which was made at that time by the protestants, and which is still subsisting, has turned out of yet more advantage to them, since the dyet became permanent. It was not so easy, heretofore, to assemble all those who compose the evangelic body. The fear of incurring the displeasure of the imperial court, or of the catholic party, discouraged several from appearing publicly at the place to which they had been summoned; but now, that they are actually assembled at the dyet, nothing hinders them from repairing to the house of the elector of Saxony's minister, and from assisting there at the conferences. The honour of summoning the protestants, and directing their consultations, occasioned jealousies and disputes heretofore, to which a remedy was happily applied, by giving that right unanimously to the elector of Saxony.

XIII. It is, no doubt, the fear of opening a new door to these jealousies, and to the divisions which would arise from them, that has hitherto hindered the evangelic body from depriving the elector of Saxony of the direction of the affairs which relate to the protestant cause, tho' he has embraced the *Romish* religion. It seems indeed a very difficult matter, not to say impossible, for a prince



prince of this religion to reconcile what the interest of the protestant religion requires, with what is demanded of him by the principles which he professes, and by the people that are always about him. Nevertheless, there are some persons, who are of opinion, that the perplexity which the court of *Saxony* would be under, if things should come to an extremity between the two parties, must certainly be a strong motive to oblige the elector to keep up their good harmony: And what gives them reason to believe, that the measures he should take would not be ineffectual, is the probability that a defender of the rights of the protestants, who passes for a staunch *Roman catholic*, must be better heard in affairs which he supports from a knowledge of the cause, than a protestant would be: whom those of the *Romish* church will always suppose to be prepossessed in favour of his own party. It is also taken for granted, that, as long as the elector of *Saxony* continues to put that value which he has hitherto done, on the prerogatives which the protestants are content he should still enjoy, and which actually give him great credit in the empire, his subjects who are secure of the freedom of their religion, by the treaty of *Osnabrück*, and this prince's own declarations, will have still the less reason to fear his hearkening to any insinuations contrary

trary to his engagements. Forasmuch as the partisans of the court of *Saxony* have themselves made use of some of these reflections, as so many motives that ought to determine the evangelic body to let the direction of it's affairs continue with that court, they have thereby plainly demonstrated, that none but political reasons can permit things to subsist on their present footing, but that it will always be in the breast of the protestants to make an alteration in this respect, whenever they think it most for their advantage.

XIV. As to the benefits which the protestant states reap from their association, and from their particular conferences at the dyet; I have already observed, in the first place, that, by this means, they are always able to prevent any thing which is to the prejudice of the interest of the protestant cause, from passing by a majority of votes in the three colleges of the empire; because, by entering into a common resolution, in their particular conferences, and by opposing it to the general opinion of the catholics, the protestants are considered as forming a separate body; which is the case, wherein, according to the treaty of *Osnabrug*, the majority goes for nothing.

XV. In

XV. In the second place, this association puts the evangelic body in a condition to maintain with more force, not only the rights which each of it's constituent members has acquired for it by the said treaty, but also the freedom of religion which that salutary and honourable treaty grants to those of their communion, who live under the dominion of a catholic prince; as also, to make head against those who should be for extending their prerogative on the subject of religion, beyond the bounds to which the said treaty has confined it: What is thereby stipulated, is as follows: "1. That the protes-

Art. 5.  
§ 32. 33.

"tant subjects of the catholic states, and the  
" catholic subjects of the protestant states,  
" who had the public exercise of either the  
" catholic or protestant religion, in the year  
" 1624, or in any part of that year whatso-  
" ever, either by any agreement, or grant,  
" or by long custom, or, in fine, by the *single*  
" *observance* of that year, shall also conti-  
" nue in it for the future, with the appen-  
" dages or dependencies, according as they  
" have had it, or can prove they have exer-  
" cised it in the same year. It orders, 2.  
" That those of the *Augsbourg* confession,  
" who had not, in any part of the year 1624,  
" the public or private exercise of their reli-  
" gion, and those who *after the public trea-*  
" *ty*

Ibid.  
§ 42.



“ *ty shall profess and embrace a religion diffe-*  
“ *rent from that of the lord of the territory,*  
“ *be, by virtue of the said treaty, patient-*  
“ *ly suffered and tolerated, without impe-*  
“ *diment, to attend their worship in their*  
“ *own houses, and in private, with all li-*  
“ *berty of conscience, and without inquiry or*  
“ *molestation; and that they may be present,*  
“ *as often as they please, at the exercise of*  
“ *their religious worship in their neighbour-*  
“ *hood, or send their children to foreign*  
“ *schools, or have them instructed at home*  
“ *by private tutors, provided they continue*  
“ *in their obedience, and raise no distur-*  
“ *bance: That they shall be treated, in*  
“ *short, in the same manner as their fellow-*  
“ *subjects, and enjoy equal justice and pro-*  
“ *tection.*” It stipulates in the third place,  
“ That it shall be free for those, who had  
“ not the public exercise of their religion, in  
“ the year 1624, to depart the country, if  
“ they chose to do it of their own accord;  
“ or, if they were so commanded by the  
“ lord of the territory, to do it with all man-  
“ ner of security, either by selling their e-  
“ states, or leaving them unfold; and that,  
“ in the latter case, they shall be at liberty to  
“ have them managed by others, and to  
“ come into the country, without a pass-  
“ port, as often as the necessity of their af-  
“ fairs shall require.” It requires, in the  
fourth

fourth and last place, " That the lords of  
" the territories grant a term, not less than  
" five years, for those subjects to retire, who  
" had not the exercise of their religion, in  
" the said year; and a term of not less than  
" three years, to those who shall change their  
" religion after the said treaty.

XVI. It were really to be wished, that in the cases, where any of these articles are not observed, it might be sufficient to complain of it to the supreme tribunals of the empire, in order to obtain the redress of such contraventions, without being obliged to seek for any other remedy. Besides, the protestant states, either in a body, or separately, ought not, in strict justice, to concern themselves of their own accord, in the disputes between a catholic prince and his protestant subjects. But there would be an end to the liberty of religion, and the other benefits, which are granted to the protestants, by the treaty of *Osnabrug*, if, after having tried all the ordinary methods which always ought to be the first, and found them ineffectual, they could not have recourse to the protection of the evangelic body; and, if it was not free for that body to receive their petitions, and to back them by their intercession with the emperor. The assistance which the protestant states give upon such occasions to their  
oppressed

oppressed brethren, is only this, that it is a surer conveyance to his imperial majesty of what it is but just that he should take cognizance of, and is not the least infringement of the right which is reserved to him, of maintaining the public constitutions, and protecting all those who ought to enjoy the benefit of the laws.

XVII. It is true, (and that's the third advantage of their association) that the evangelic body does not stop there, when it begins to find that evil counsellors hinder the emperor from doing justice to those who suffer; or when it perceives, that the very persons, ordered by his imperial majesty to redress those grievances, only elude his exhortations and decrees, by an open resistance, or a thousand subterfuges. There are not wanting examples, where either the body of the protestants in general, or some one of them that was in the best capacity of doing it, has employed menaces and reprisals, to stop the persecutions of the opposite party; but recourse was not had to these extremities, until all amicable methods had been tried to no purpose, and after observing all the decorums demanded by justice, and by the tenor of the treaty of *Westphalia*.

1610.

R

XVIII. By



XVIII. By *reprisals*, I here mean the resolutions which have been sometimes taken by the protestant princes of the empire, to prohibit their catholic subjects, in some parts of their country, the free exercise of the *Romish* religion, and to deprive them of the revenues, or other advantages, which they enjoyed by virtue of the said treaty, as an experiment, if they could, by that means, divert a catholic prince from the wrong which he did to his protestant subjects. It is not denied, that reprisals in general, of this kind, are liable to many objections; because the union of those who profess one and the same religion, is not of such a nature as that if an injury be received from any one of them, satisfaction may be demanded for it from another of the same communion, as it may between those who are members of one and the same civil society. But, if it be considered, with what view it was agreed by the treaty of *Osnabrug*, that the catholic subjects should have the free exercise of religion in the protestant countries, and the protestant subjects in the catholic countries; and, if regard be also had to what was prescribed by that very treaty, for the security of such as are in danger of being deprived of any of the advantages thereby granted to them, it will easily appear, that the reprisals which I speak of,

of, are not at all unjust, when they are made use of consistently with the views of those who drew up the articles of the said treaty, and with the modifications therein expressed.

XIX. It is undeniable that the said convention was made between the catholic and protestant states, with a view to the reciprocal advantage of the subjects of both parties; and that in this respect it resembles the agreement which is tacitly made between the sovereigns of different religions, by permitting an ambassador who resides at their court, to have a public chapel, where they who are of the same communion with himself, may be present at divine service. Now, as nobody doubts but it is lawful for a sovereign to deprive an ambassador of this privilege, if his master does not pay the due regard to it in his own country; so no protestant prince of the empire can be blamed, when he deprives his catholic subjects of the advantages which he has been pleased to allow them, in consideration of an equal benefit which a catholic prince ought to grant to his protestant subjects, when the catholic refuses to observe the articles of their reciprocal convention.

XX. It is true, that the articles agreed on betwixt the catholic and protestant subjects, with

with regard to the affair in question, received a sanction by the said treaty, which gives them the greater weight; and that it is therein plainly said, that those articles ought to subsist in their full force, even though one of the parties should infringe them; but then it shews, at the same time, after what manner the infractors of them ought to be prosecuted. It is thus expressed in the seventeenth article, *It first establishes this general thesis,* "That all who have had a share in this transaction, shall be obliged to defend and protect all and singular the laws or conditions of this treaty, against any person whomsoever, without distinction of religion." After this general position, it shews from one degree to another, what course ought to be taken, in the execution of the said regulation: "If it should happen, says the treaty, that any articles of this transaction should be violated, by any one whatsoever, the person offended shall endeavour, in the first place, to divert the offender from doing violence, by submitting the cause to an amicable composition, or to the ordinary course of justice. And if, in the space of three years, the difference cannot be determined by one or other of these methods, all and singular the persons concerned in this transaction shall be obliged to adhere to the party injured, and to



“ to assist him with their advice, and their  
 “ forces, to repel the injury, *after the party*  
 “ *offended shall have convinced them, that the*  
 “ methods of lenity and justice have been  
 “ of no manner of avail to him.” I leave it  
 to the reader to judge, whether the evange-  
 lical body, by observing all these cautions in  
 the vigorous resolutions which it should be  
 forced to take against such as should openly  
 transgress one of the articles which con-  
 cern the protestant cause in general, could be  
 justly blamed, especially, when instead of  
 appointing commissioners of the two religi-  
 ons to examine upon the spot the sole pos-  
 session of the right which is in controversy,  
 there is a design to fatigue the complainant  
 by such tedious processes, that it often hap-  
 pens, the party chuses rather to drop his  
 right, than to waste his spirits and substance  
 in the prosecution of it.

XXI. One of the methods which the evan-  
 gelic body has made use of several times, and  
 which is also one of their indisputable right,  
 is to send some person of their body, in the  
 quality of public minister, to the court of that  
 prince with whom they would enter into an  
 accommodation upon the religious grievances.  
 It is but lately, that a certain court endea-  
 voured to start difficulties upon this head, by  
 declaring, that the plenipotentiary ministers

of the protestant states, at the dyet wherein such an embassy is resolved on, could not give a character of a public minister, to the person whom they charge with a negotiation; which would indeed be true, if they acted by their own authority. But forasmuch as these plenipotentaries are the representatives of their masters at the dyet, and as it is by the power they have received from thence, that they exercise the right of legation of which I am speaking, it is with the masters themselves, and not with their plenipotentaries, that this right is properly disputed, by rejecting the persons whom they charge with an embassy; and they forget, that the ministers sent to foreign courts by the governors of the *Netherlands*, in virtue of the power which they had received for that purpose, from their masters, were admitted and acknowledged there in that quality: not to say that this right of the evangelic body is likewise founded on a long possession.

**XXII.** The right of concluding alliances belongs also indisputably to the evangelic body, which has exercised it upon several occasions, even before it had it's present consistency; and it would be a manifest contradiction to dispute with all the protestant princes collectively, what each of them has a right of doing singly.

## C H A P. XX.

*Of the electors, princes, and other states of the empire, considered as forming separate bodies in the empire; and of their particular assemblies.*

I. **W**E have already represented the states of the empire assembled at the general dyet, as three distinct bodies, or colleges, with regard to the consultations therein held. But they appear still more like separate bodies in the particular dyets or assemblies which each order of those states is authorized to hold for its particular interests.

II. The electors were the first that distinguished themselves from the other members of the Germanic Body. The right which they had insensibly acquired, of being the sole electors of the emperor, was of itself very conducive to give them a great lustre: but, when they began, in the reign of the emperor Lewis of Bavaria, to conclude a strict alliance among themselves, in order to maintain the possession of that right, and the other advantages which they had thereby acquired, it gave them a still greater ascendant over the others: And to this the golden bull contributed also not a little;

Ry 4 mil going to right for



Tit. xii.  
§. 1.

for it represents them as the columns of the empire, and not only authorizes them to hold particular assemblies, but likewise exhorts them to be watchful of its safety and interests, and to meet frequently with this view. The emperor *Wenceslaus*, partly from his own indolence, and partly from the contempt they had for him, furnished them with a fine opportunity immediately after this to make an improvement of their prerogatives, which they pushed so far as to depose him in all the forms. They met likewise very often in the reign of *Frederic III.*, with whom they were so disgusted, that they had like to have elected a king of the *Romans* to share the government with him. It was in this same reign that they began to form a particular chamber at the dyet. In fine, the right of prescribing a capitulation to the emperors, of which the electors were in possession ever after the election of *Charles V.*, was very favourable to them for augmenting their pre-eminence, inasmuch as they made a good use of this right to oblige the emperors to desire their opinion and consent principally on affairs of the greatest importance. They found so little opposition herein from the emperors, that, on the contrary, several of them thought of letting the general dyets drop insensibly, as we have already observed elsewhere, by contenting themselves with  
sum-

summoning the electors, and only associating some princes with them that they had need to keep fair with, according as the nature of affairs required.

III. The *Westphalian* treaty re-established the necessity of the general dyets, and restored the princes and the other states of the empire to their ancient prerogatives in this respect; yet it did not prove the means of depriving the electors of their great superiority, nor of the right of holding particular assemblies. There are some to the necessity of which the law itself subjects them; I mean those which relate to the choice of an emperor. There are others, which they hold either at the request of the emperor, or of their own accord. The emperor assembles them, when he wishes they would appoint his successor by the election of a king of the *Romans*; or, in such cases, wherein, by virtue of his capitulation, he ought principally to require the consent of the electors; for example, when there is a necessity of taking a speedy resolution for some urgent emergency of the empire; or when there are any commotions to be apprehended in the execution of any important affair; or when he is inclined to grant to a member of the empire the right of establishing a new toll, for which all the electors must give their

their consent first. It was necessary that this right of sovereignty should receive a restriction with regard to those, who, together, make one and the same body, because the general benefit of commerce in the empire is therein concerned, and because it is but just that the private interest should, in this case, give way to that of the public.

IV. It would be difficult to specify all the cases in which the electors may hold assemblies by their own authority; but they may be distinguished into those which aim at the public good, as, for instance, the consultations which they should hold concerning the conduct of an emperor, whose government they should not approve of; and those which relate to their particular benefit, as would be the renewal of their ancient alliances, for maintaining those prerogatives of which they are in possession. It is very obvious, that the resolutions which the electors take in their assemblies, must give a great spring to the affairs of the empire, when they are unanimous. And, if it be considered in the next place, how the electors govern their own dominions, and how much influence they have by their power, not only over the affairs of the empire, but also over those of *Europe* in general, their character of being true sovereigns is in no danger of being controverted; and,



and, to save the sovereignty of the other states of the empire equally, there needs nothing more than to avoid misconstruing what is a natural effect of their weakness, for a defect of right.

V. I have already observed, that the treaty of *Westphalia* re-established the rights of the princes and the other states of the empire on their ancient basis. But I shall here add, that this basis is become more solid than ever; 1. by the liberty which this treaty secures to them, of making alliances among themselves, and with foreign powers, for the defence of those rights. 2. By the obligation into which all the contracting parties of this treaty entered to guarantee it. The princes have not failed to improve these advantages. Since that time we have seen them more than once form particular confederacies, not only for the preservation of their rights of sovereignty, but for the maintenance of their prerogatives in the empire, and for their concurrence in all affairs that concern the whole *Germanic Body*, even so far as to cause *France* and *Sweden* to interfere in them, in quality of guarantees of the peace of *Westphalia*, when they thought the emperor was inclined to neglect them, and to slight their concurrence in those affairs. Therefore the princes of the empire ought with reason

to

to be considered as a very respectable body, both by its own power, when it acts in concert, and with the countenance of the imperial court, when their respective interests do not clash, and also by the assistance of foreign powers, some of whom constitute a part of this body, for the countries which they possess in *Germany*. There is indeed no express mention in the public constitutions, of their right to hold particular assemblies in the empire. But this right results naturally from their right to make a league among themselves for their common defence; and this they have so often exercised openly, and without contradiction, that there is no room left to call it in question, considering especially, that the inferior states, of whom I am yet to discourse, are also qualified to assemble themselves when their particular interests demand it.

VI. The counts of the empire have their seat indeed in the college of princes at the dyet: but as they do not, each in particular, enjoy at the said dyet a right equal with the princes, and as they do not assist at the assemblies of the latter upon the occasions of which I am speaking, the counts may also be considered as forming a separate body, and enjoying all the rights which a particular body can enjoy in the empire, without prejudice of the general body; but it is with

re-

regard to them, that the difference, owing to the inequality of power between those who have in other respects the same right, chiefly shews itself. It is towards them especially, that the emperors exercise their reserved rights, and that authority with which it has been thought fit to vest the head of the empire, in such a manner, that foreigners are under a difficulty to find the essential characters of sovereignty in the territorial superiority of the counts. It would therefore be worthy of the attention of confederates of one and the same body, to make it a common cause with the counts, when this territorial superiority is violated as to them; not to say, that by a connivance at the procedure which the imperial court often observes towards the weak states in general, it is possible not only to corroborate the principles with which the flatterers of that court endeavour to inspire it, but also to make foreigners believe, that it is not so much the sovereignty of the princes of the empire of the first rank, as their power, that hinders the imperial court from acting in the same manner against them.

VII. The observations which I have just now made, are also applicable to the free cities of the empire, some of which are considerable enough to make the figure of a republic;



public; but others (and they are the greater number) in such a weak state, that their right of territorial superiority, tho' it is not disputed with them, is become merely precarious in their own bounds, as to the exercise of it, not only in consideration of the emperor, but of some powerful neighbour. If one calls to mind the figure which those cities formerly made by their confederacies, and by the armies which they formed in the empire, it is hardly to be believed, that they are at this day the same republics. The decay of some of them is owing to the ruin of their trade, since the merchandize of the *East-Indies* and the *Levant* have taken another course: others are fallen under the absolute power of the prince in whose territory they were situate: all in general would perhaps have undergone the same fate by this time, if the different interests of their neighbours had not proved a rampart to them, and if it was not the policy of the imperial court to support them. It is true, that some pay very dear for this protection, but still they had rather stoop to the emperor, and suffer themselves to be fleeced by commissioners who abuse his power, than lose both their liberty and their wealth by becoming municipal towns.

## C H A P. XXI.

*Of the division of the empire into ten circles,  
and of their internal regulation.*

I. **I** AM next to treat of the division of the empire into circles or great districts, which may be considered also as so many separate bodies, considering in what manner things are therein regulated for the safety and benefit of each. We have already shewn in more places than one, that the wise regulations which were made anciently for the government of the provinces included under the monarchy of the Franks, were so much disordered by intestine troubles, and by the decay of the imperial authority, that it produced a strange subversion of justice, and a state of real confusion and war among the members of the empire, inasmuch that each of them, when he had any quarrel, was obliged to have recourse to his own strength. An attempt was made to remedy this disorder by the erection of the imperial chamber: but, as this new tribunal would have been of no great use, if methods had not been contrived at the same time for putting its decrees in execution, and laying a forcible restraint upon those who should be inclined to contemn its authority, it was thought that nothing

thing would be more proper for this end than to divide the empire into certain districts, and to charge each of them with the particular care of maintaining the public peace among it's members. The first circles which were formed with this view, anno 1500, were those of *Bavaria*, *Franconia*, *Swabia*, *Saxony*, the *Rhine*, and *Westphalia*, which are still called the *ancient circles*.

II. But the provinces which the house of *Austria* is possessed of in the empire, and those of the electors, were not included in those six circles, either because they thought themselves alone powerful enough for maintaining the public peace there, or because they looked upon this new establishment as prejudicial to their particular interests. This exemption not being a good example, *Maximilian I.* in whose reign this division of the circles was made, thought it would be better for his authority to make a circle also of his provinces in *Germany*, in order to engage the electors to do the same. Therefore four new circles were added to the six old ones, viz. the circles of *Austria* and *Burgundy* for the provinces of the house of *Austria*; that of *Upper Saxony* for the electors of *Saxony* and *Brandenbourg*; and that of the *Upper Rhine* for the territories of the ecclesiastical electors and



and the *Palatinate*. The kingdom of *Bohemia* was not comprehended in this division of the empire, because it was then almost broke off from the *Germanic Body*, and because the emperor himself, dissatisfied with king *Uladislaus*, then on the throne, had no mind that the said kingdom should be again united to the empire as anciently.

III. It was necessary for the benefit of each of the circles, that the states therein comprehended should assemble from time to time, to consider of what might concern their tranquillity and particular advantage, and that things should be placed on such a footing in those assemblies, that all it's members might join their forces for the maintenance of their security both at home and abroad. It was this that gave occasion for establishing a director and a duke in every circle, whose province it is to summon the states of the circle, to direct their deliberations, and to take care that their common resolutions are put in execution. It is he also who is to have an eye to the general interests of the circle, and to receive what the emperor, or those who have any business with the circle, or even they who are it's members, have to demand or communicate. The duke of the circle is to charge himself with all military expeditions, and to take care that

§

every

every member of the circle keep his contingent of forces ready for that purpose, and that nothing, in short, be wanting which the security of the circle demands in this respect, and to use his endeavour, at the same time, to obviate all disturbances that might therein arise, and to check them in their infancy.

IV. At first it was the business of the imperial court to commission whatever prince it thought fit to summon the dyet of the circle, and to direct what affairs were therein to be treated. And, as it was natural for it to grant such commission to him who bore the first rank in each circle, the office of director insensibly became hereditary. Custom therefore has made it a law to exercise this office now in the circle of *Austria* by the archduke of that name; in the circle of *Bavaria* by the elector who bears that title, and by the archbishop of *Saltshourg*; in that of *Franconia* by the bishop of *Bamberg*, and by the margraves of *Brandenbourg-Bareith*, and *Anspach*, who exercise it in turn every three years; in that of *Saxabia* by the duke of *Wurtemberg* and the bishop of *Constance*; in that of the *Upper Rhine* by the bishop of *Worms*, and by the count *Palatine* of *Simmeren*; in that of the *Lower Rhine* by the elector of *Mentz* alone; in the circle of *Westphalia* by the bishop of *Munster*, and by the

the elector of *Brandenbourg* and the elector *Palatine*, who hold the office of director by inheritance from the last duke of *Julers* and *Berg*, whose dominions are shared betwixt them, and therefore they exercise this office jointly. The circle of *Lower Saxony* has for it's directors the dukes of *Magdebourg* and *Bremen*, formerly archbishops and the dukes of the house of *Brunswic-Lunembour*, the two branches of which have made treaties upon that head, which regulate their condirection. The elector of *Saxony* is the sole director of the circle of *Upper Saxony*. The circle of *Burgundy*, which formerly comprehended the *Franche Compe*, of *Upper Burgundy*, and all the provinces of the *Netherlands*, had for directors the kings of *Spain*, while those countries were under their dominion.

V. The reason, why in each of the old circles a spiritual prince was associated to a temporal one in the office of director, is principally, as it appears from the records made at *Constance* in the year 1507, that the former might second the latter with their spiritual sword, that is to say, with menaces and pains of excommunication against such as had not a sufficient dread of the temporal power and penalties. It is also to be observed, that, of such as bear the title of directors



rectors in one and the same circle, there are some who only share in the prerogative of summoning the dyet of the circle, and have no concern at all in the other functions of that office.

VI. The protestant states claim that, in the circles where there are members of both the religions, there should be also directors of both; it is the extinction of the *Palatine* branch of *Simmerm*, which was of the protestant religion, that has given occasion to this dispute of the *Palatine* branch of *Newbourg*, which is catholic, having succeeded to the principality of *Simmern*, and by consequence to the office of directors. The elector of *Brandenbourg* has also represented, that, since the elector of *Saxony* changed his religion, he ought to have the direction in the circle of *Upper Saxony*; the rather, because that circle is wholly composed of protestant members. Both these claims are as yet undetermined.

VII. The office of *duke of the circle* is not hereditary; but it is free for the states of the circle to chuse that person whom they think most proper to fill it, provided only that he be under no engagement which can hinder him from acquitting himself in a manner agreeable to the constitutions and welfare of the

the empire. It was a question heretofore, Whether an ecclesiastical prince could be vested with this employ? But since then there have been so many instances of bishops who have discharged this office with approbation, as put it now out of all manner of question. The person who is director of the circle, or at least one of its principal members, is commonly chose for duke of the circle. It is also customary to give to the duke of the circle certain adjoints, with whom he is to concert the affairs that are the subject of his employ, and who are to supply his place when he cannot fill it himself.

VIII. All these Regulations, to which I have just now mentioned, are of themselves very proper for producing the good effects that was proposed in making them. But there are several circles in which they are entirely dropped, and where no dyet has been held for a very long time. Such circles as are composed of a great number of states of divers ranks, and in which by consequence it is the more necessary that deliberations should be held concerning the common interest, are the only ones in which these regulations are still practised. There are even some circles which keep up a strict union among themselves, and hold common dyets as occasion requires. By reason of these relations to one another they

The GOVERNMENT of the  
are called *corresponding circles*, such as are  
those of the *Upper Rhine*, the *Lower Rhine*,  
and *Westphalia*, which assemble together very  
frequently. *Lastly*, It is a prerogative of the  
directors and the dukes of the circles, to be  
charged with the execution of the sentences  
of the sovereign tribunals of the empire, and  
of the decrees of the emperor; and I have  
already observed elsewhere, how well the di-  
rectors of the circle of *Lower Saxony* have  
defended this right against the ineroach-  
ments of the imperial court.

IX. After all, it is difficult to determine,  
whether the good resulting in some respects  
from the division of the empire into circles,  
is equal to the inconveniencies arising from  
it, when it is considered that it very often  
happens, that, instead of acting as members  
of one and the same body, and uniting their  
interests, these circles are every one more en-  
gaged in the pursuit of their particular profit  
than the good of the public, especially when  
they are so remote from one another, that they  
are not immediately sensible of the misfor-  
tune of that circle which is exposed to the at-  
tacks of a neighbouring power. The em-  
peror, however, has this benefit by the divi-  
sion of the empire into circles, that, when  
there is an absolute necessity for his proceeding  
to a rupture with a neighbouring prince, he  
may



may take previous measures with some of the circles, before he solicits the assistance of the whole empire in a general dyet.

## CHAPTER XXII.

*A succinct account of the causes which disturb the good harmony of the Germanic Body, and of the advantages that would redound both to the head and the members, if they all made use of their power pursuant to the public constitutions, and to the natural intent of them.*

**I** Could not conclude this work without inquiring into the causes, which, by depriving the empire of part of its strength, tarnish the lustre which it ought to have naturally; and what would be the proper remedies. But all that I have to say on this subject, either upon the authority of others, or my own, I readily submit to the judgment of all those who are not only perfectly acquainted with the affairs of Germany, but have a lively affection for that country, and an ardent zeal for its honour and interests. There are some persons who ascribe the weakness of the empire, when it is to act in a body, to the very nature of its government, which they presume to call monitrous, because there

is none like it in history, and because it differs in several respects from that very sort of government, of which I said it had the essential parts; I mean those civil bodies that are formed by the confederacy of several free states. But it is my opinion, that the irregularities which are to be found in the government of the *Germanic Body*, are not of a nature directly contrary to the general aim of civil societies, and that they may be compared to the defects of places whose situation does not admit of their being regularly fortified, yet have every thing that is necessary for their defence, and fall into the hands of the enemy, chiefly because they who ought to defend them are not agreed one among another. I shall therefore here reckon up the most flagrant irregularities of the government of the empire, and, at the same time, that I take notice of the inconveniences that may result from them, I shall endeavour to point out the means for preventing the ill effects of them, and how advantageous it would be to the head and members to co-operate together for this purpose.

II. I know not whether the difficulty there is for several members of one and the same body to agree together, in what relates to their common benefit, and the slowness which therefore naturally attends their deliberations,

berations, and their putting them in execution, ought to be numbered among those irregularities; this being the very defect of all confederate states in general, and for which there is no remedy, without endangering the freedom which each of them would be for preserving. It is true, however, that the greater the number is of those who are leagued together, the greater is this inconvenience; and herein does the chief irregularity of the *Germanic Body* principally consist. But it is sufficient for the preservation and the common benefit of confederated bodies in general, that they readily agree in things that evidently tend to this end. The history of the empire furnishes us with several instances, where an affair has been resolved on at the dyet, with great readiness, when there was a firm persuasion that the emperors who proposed it, had nothing in view but the real glory and true advantage of the empire, and then none of its members is backward to concur therein with its head. If, on the other hand, an affair is laid before the dyet, under the appearance of the public good, and yet, at the same time, it has several aspects, there can be no great harm in examining it leisurely, and taking a good deal of time to balance the inconveniences with the conveniencies; because it may sometimes happen, that what is proposed for the general



ral good, only tends in fact to the advantage of a part.

III. This leads me to a consideration of a second irregularity peculiar to the *Germanic Body*, which is the inequality of those that compose it, who differ so widely from one another, not only by their power, and the rank they hold in the empire, but by the prerogatives which they therein enjoy, with regard to it's government in general, that they may be considered as so many particular little bodies, having separate interests. These distinctions cannot but create jealousies, if the person to whom they are due, makes use of them in a manner incompatible with the welfare of those who are of an inferior rank, and if they prove to their detriment. But would it be impossible for those whose interests are the same, as for what relates to the security and solid advantage of each, to be sensible how much it imports them to treat those with decorum, over whom their dignity and their power give them a great ascendant? And is it not possible, that the consideration of the advantage which they may reap from their affection, in cases where they shall need their concurrence, should incline them to win their respect, by a generous and fair deportment; so as that they may consider the increase of the power of their neighbours,

neighbours, as the rampart of their own security? When we consider what has contributed to the rise of many families in the empire, and to the fall of others, it will appear, that only those which cultivated the friendship of their neighbours, and made use of their power to protect them, have laid a solid foundation for their greatness; whereas the power of such as have acted otherwise, has been suddenly overthrown, as soon as they, to whom it became noxious, were able to make it a common cause with their enemy, or with the emperors, to whom it was convenient to humble them, by laying hold of the proper opportunities for that end.

IV. They who judge of the nature of confederate bodies, not so much from what ought to be the view of them, as from the idea which they have formed of them, by those which they have read of in ancient history, and by that system which we now see in the seven provinces of the *Netherlands*, also think it as a very great irregularity, that the holy *Roman* empire should have a head to give it the external appearance of a monarchy. But it has already been observed elsewhere, that this singularity of the *Germanic Body* proceeded from the manner in which it was insensibly formed such; and that it would be impossible, considering

## The GOVERNMENT of the

sidering the great number of the members  
 that are a part of it, and the difference of  
 their rank, and their power, that it could  
 subsist without a head to cement the union of  
 it; and to put it in motion. Nevertheless, it  
 must be owned, that the prerogatives with  
 which it was necessary the head should be in-  
 vested, have proved a source of divisions be-  
 tween the emperor and the states of the em-  
 pire. The emperors themselves are partly to  
 be blamed for this, who have not always  
 made use of their prerogatives for that pur-  
 pose, but have chose to govern with a mo-  
 narchical sway; and some of the most pow-  
 erful princes of the empire are likewise to be  
 blamed, who, not content with governing  
 their dominions like true sovereigns, have  
 sometimes thought it so great a hardship, that  
 their sovereignty should receive the least re-  
 straint from the general constitutions of the  
 body to which they are joined, that they  
 have impugned the very authority of the em-  
 perors, even when that authority was only  
 employed, in pursuance of the obligation  
 which they are under to maintain the pub-  
 lic constitutions. Nothing seemed more pro-  
 per for preventing this inconvenience, than  
 the confederation of the great advantages that  
 would result from it, to both the head and  
 the members of the *Germanic Body*, if each  
 of them would but abide by what has been  
 wisely



wisely regulated by common agreement, and have a retrospect to the examples of times past. The count de Hapsbourg, though a prince of very little power when he was advanced to the imperial dignity, yet by his application to make it instrumental for the honour and tranquillity of the empire, and by his acting always in concert with the states, he found them disposed upon every occasion, not only to support him in the exercise of his prerogatives, but also to stand by him in every step that he took for the advancement of his family. And *Albert I.*, one of his glorious descendants, who trod exactly in the path of this founder of the house of *Austria*, would have enjoyed the same happiness, if death had not snatched him away in the second year of his reign. On the contrary, we have seen that other emperors of this family have filled the empire with disturbances and wars, by endeavouring to stretch their authority to too high a pitch, and by forming designs directly opposite to the general interest of *Germany*, and the liberty of it's members. And what has been the consequence of all these enterprizes, but a fresh diminution of the imperial authority, and an increase of the rights of the states of the empire, as well for the government of their own provinces, as for that of the whole body? They, who have no notion of any thing more grand than

absolute

absolute power, have been pleased to banter the conceit of an author, who represented the emperor as reigning over kings, because they plainly perceived, that the princes of the empire who were thereby characterised, would nevertheless govern despotically, and that there would be always an *Achilles* among them, ready to oppose an *Agamemnon*. But an emperor who should look upon his government in this light, and only imitate the wisdom of kings who reign over nations, which were not willing to grant him more power than the aim of civil societies requires of them, would make as great a figure in Europe, as *Charles the great* did, by joining, for the honour of the empire, all the forces of it's members, of whom there are several capable alone of forming great armies; and who would make no more scruple of honouring their head, than the catholic powers do, with regard to the submissions and respect which they pay to the popes in quality of head of the church.

V. As the emperors may find their account by confining their authority within the limits which are prescribed to them very wisely by the public constitutions, the case would be the very same with all the states of the empire in general, if they contented themselves with governing their country in peace,

peace, and with the enjoyment of the prerogatives of which they are possessed, without infringing those of the emperor, and without exciting the fear or jealousy of those with whom they ought to be united. It is just, and it is for the general good, that the princes of the empire should strenuously withstand an emperor who should make the public laws a screen for his design to cramp their sovereignty, in cases where they do nothing contrary to the public welfare. It is also but just that the electors, by acting in such case in concert with the other members, and espousing the interests of the whole body, should take care to have something inserted in a new capitulation, which may obviate any more abuses like those that have happened. But, forasmuch as the union of the forces of the whole body is the greatest security of each of the members in particular, and as the emperors have so many ways and means to bring a great part of them over to their side, even when their own interest has the ascendant in the resolutions which they take, it is easy to perceive that whoever should happen to be embroiled with them, would have reason to fear that the emperors would thwart him in his undertakings, tho' never so just, and that he should, in certain conjunctures, feel their resentment. There is not a family in Germany but has, at some time or other,



other, been made sensible of the effects either of the favour or the hatred of the emperors. And if the very men, who disturbed the tranquillity of the empire by violent proceedings against their neighbours, have prevailed with the imperial court to connive at it from any motive of affection, or from the hopes of obtaining any advantage from them in it's turn, would not a prince, who makes his sovereignty and his power subservient to the welfare of his own dominions, and of the empire in general, and who should at the same time contribute to the maintenance of the authority of the emperors when they act from the same motive; would not such a prince have reason to expect that, in acknowledgment of his services, and the respect he observes to the head of the empire, he should also find him always ready to support him in the defence of his rights, whether they are attacked by open force, or whether he be reduced to the necessity of submitting them to the decision of the sovereign tribunals of the empire, where favour often avails more than the laws? Not to say that the credit which a prince who should act thus, would thereby acquire at the imperial court, would also be of service to him for supporting the interests of his friends at that court, and by that means to bring over to his party such as should have need of his concurrence and protection.

VI. I have forbore to mention the diversity of religion that is professed in a country as one of the irregularities of a government. But it is a very melancholy consideration, that the *Christian* religion, which is so proper for cementing a concord between mankind, and for knitting the bands of civil society, is become the occasion of the great divisions that we see in the empire; and that all the constitutions which have been made with a view to remedy it, have not yet produced that salutary effect. What we have been obliged to mention upon this subject, in treating of the evangelic body, proves this but too plainly. Mean time, upon a calm reflection, it is observable, that the wars and animosities between the two great parties, so distinguished in the empire, have not been kindled by a zeal for the true interest of religion, and for the advancement of piety; but that they have been the fatal effects of private views, and which selfish interests it would be in vain to attempt to stifle in the hearts of those who are thereby animated. But, perhaps, it would not be so impossible to convince the two parties (for there is an absolute necessity of using a term which ought to be unknown to *Christians*) that it is for their temporal interest, to observe at least what is prescribed to them in this respect, by the *Trea-*

T

ty

ty of religion, and that of *Osnabrug*. One would be apt to think, that the members of the empire, who adhere to the church of *Rome*, might content themselves with what they actually enjoy, and with the superiority which they have over those of the *Augsbourg* confession. They cannot but have heard, that the princes who have banished those subjects out of their country, that were not of their own religion, have not, by so doing, rendered it a whit the more flourishing: and the real welfare of their state, to which nothing can contribute more than tranquility and a good union, should naturally incline them not to make their *Protestant* subjects uneasy, by depriving them of the advantages that are allowed them by the said constitutions, for the free exercise of their religion, whose principles certainly contain nothing that can disturb the state, or give umbrage to princes in their right of sovereignty. And is not the bare recollection of what has happened heretofore, enough to convince them of what importance it is to them to extinguish the first sparks of a fire which has caused such great conflagrations, and to treat every one that should be fond to re-kindle it, as a disturber of the tranquility of their country? Another remark should be added to this, which is very proper to stop the ear against bad counsel, upon this article, *viz.* that



that the catholic party have been always sufferers by the wars that have been in the empire on the account of religion, whatever advantages they expected from them at first : A consideration which must undoubtedly shock the princes, and have the same effect too upon the *Romish* clergy, if the latter were not prompted by a restless system of policy, to be perpetually striving to regain that ground which they have lost, and if they were not commonly the more emboldened to embroil and enterprize, by being more independent on those interests which make others desirous of peace and tranquility.

VII. I question whether a man could be justly accused of partiality, who should say that the members of the empire of the *Augsbourg* confession have never yet forgot the principles of toleration which they profess, to such a degree as to treat their catholic subjects just as the protestants have been treated by some sovereigns of the *Romish* religion, except only when they have thought themselves forced to use reprizals ; which is no kind of injustice, when such reprizals are used with the restrictions that are required, as has been already specified. It is for the interest of the protestant princes to adhere always to the spirit of christianity, and the precepts of the gospel, which so strongly recom-

mend mutual charity and assistance, to the end that, their catholic subjects may have no just reason to complain against them; and that, on the contrary, their equity and lenity may engage the catholic princes to follow their example, with respect to the protestants who are in their dominions. They will undoubtedly also be sensible, that moderation and wisdom require that they should duly examine the grievances referred to the evangelic body, with a petition for the redress thereof by its intercession; and that they should exhort those who are in a state of suffering, to bear slight vexations with patience, to the end that, in those cases which demand pressing solicitations and vigorous resolutions, they may be convinced, that those solicitations are rendered absolutely necessary by the great interests of the protestant religion, and by an apprehension, that matters may be carried to a greater length. This is a means to give them the more weight: and, as it would be impossible for them to maintain those great interests, longer than they are in a good union amongst themselves, it is of the last consequence to them carefully to avoid every thing that might disunite them, and not to labour so much for a re-union, which has been so often attempted in vain in points of doctrine, as to watch the conduct of those who embitter the tempers of people by incautious

cautious writings and sermons, and who boast of pleading for truth, when, at the bottom, they only act from a low and fordid interest.

VIII. As long as these maxims are observed, which are founded on the very nature of religion, on the welfare of civil societies in general, on the particular interest of the *Germanic Body*, and on the wise constitutions which press the practice of them, so long, and no longer, may we hope to see the empire, which was so respected heretofore by all the princes in *Europe*, resume its ancient lustre, and be in a condition, not only to repel its enemies, but also to maintain the balance of power in *Europe*, and to establish peace in it, in conjunction with those who think it their glory to make the same use of their power.

F I N I S.





BOOKS lately published by J. NOURSE, at the  
Lamb, opposite Katherine-Street, in the Strand.

I. **BOERHAAVE's** Medical Correspondence ; containing the various Symptoms of Chronical Distempers ; the Professor's Opinion, Method of Cure, and Remedies. To which is added, *Boerhaave's* Practice in the Hospital at *Leyden*, with his Manner of instructing his Pupils in the Cure of Diseases.

II. Consultationes Medicæ : Sive Sylloge Epistolarum cum Responsis *Hermanni Boerhaave*. Price 3 s.

III. Pharmacopœia Collegii Regii Medicorum Edinburgensis. *A new and correct Edition, with considerable Additions and Amendments.* 12mo. Price bound 2s. 6d.

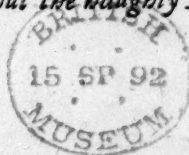
IV. *Hermippus Redivivus* ; or, the Sage's Triumph over Old Age and the Grave. Wherein a Method is laid down for prolonging the Life and Vigour of Man. Including a Commentary upon an ancient Inscription, in which this great Secret is revealed, supported by numerous Authorities. *The Whole interspersed with a great Variety of remarkable and well-attested Relations.* Price 2 s. in 8vo.

V. The Royal English Grammar ; containing what is necessary to the Knowledge of the English Tongue, laid down in a plain and familiar Way. For the Use of young Gentlemen and Ladies. To which are added, Lessons for Boys at School, shewing the Use of the Parts of Speech, and the joining Words together in a Sentence. By *James Greenwood*, Sur-Master of St. Paul's School. The Second Edition. *This Book is recommended as the best in its Kind by Dr. S. Clarke, Dr. D. Waterland, and Dr. J. Watts.* Price bound 1 s. 6d. 12mo.

VI. A Practical English Grammar ; describing the Genius and Nature of the English Tongue, &c. To which is prefixed, an Account of the Rise and Progress of the English Language, with Notes. The Fourth Edition, with Additions, in 12mo. By *James Greenwood*, late Sur-Master of St. Paul's School. Price 2 s. 6d.

A Character of this Grammar by the Rev. Dr. *Isaac Watts*.

*Those who have a Mind to inform themselves of the Genius and Composition of our Language, either in the Original Derivation of it, or in the present Use and Practice, must consult such Treatises as are written on Purpose ; among which I know none equal to that Essay towards a Practical English Grammar, by Mr. James Greenwood ; wherein he has shewn the deep Knowledge, without the haughty Airs, of a Critic.*



1. The first part of the paper is devoted to a general  
discussion of the subject.

2. The second part is devoted to a detailed  
discussion of the subject.

3. The third part is devoted to a detailed  
discussion of the subject.

4. The fourth part is devoted to a detailed  
discussion of the subject.

5. The fifth part is devoted to a detailed  
discussion of the subject.

6. The sixth part is devoted to a detailed  
discussion of the subject.

7. The seventh part is devoted to a detailed  
discussion of the subject.

8. The eighth part is devoted to a detailed  
discussion of the subject.

9. The ninth part is devoted to a detailed  
discussion of the subject.

10. The tenth part is devoted to a detailed  
discussion of the subject.

11. The eleventh part is devoted to a detailed  
discussion of the subject.

12. The twelfth part is devoted to a detailed  
discussion of the subject.